

United States  
Circuit Court of Appeals

For the Ninth Circuit.

Transcript of Record.

*(In Three Volumes.)*

STANDARD PORTLAND CEMENT CORPORATION, a Corporation,

Plaintiff in Error,

vs.

ERNEST E. EVANS, GEORGE COLEMAN, and  
PERCY W. EVANS, Partners Doing Business Under  
the Firm Name of EVANS, COLEMAN AND  
EVANS,

Defendants in Error.

VOLUME I.

(Pages 1 to 304, Inclusive.)

Upon Writ of Error to the United States District Court of  
the Northern District of California, Second Division.

FILED

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Account of Mrs. G. G. G.  
Account of

499





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*In the Circuit Court of the United States, Ninth Circuit, in and for the Northern District of California.*

ERNEST E. EVANS, ——— COLEMAN, and  
PERCY W. EVANS, Partners Doing Business Under the Firm Name of EVANS,  
COLEMAN & EVANS,

Plaintiffs,

vs.

STANDARD PORTLAND CEMENT CORPORATION, a Corporation, WILLIAM J. DINGEE and IRVING A. BACHMAN,

Defendants.

**Complaint in Action at Law.**

The plaintiffs above named complain of the defendants above named and allege:

**I.**

That the plaintiffs are and at all the times hereinafter mentioned were aliens and residents of British Columbia, and citizens of the Dominion of Canada and of the Kingdom of Great Britain, and subjects of King Edward VII, King of Great Britain and Ireland.

That the plaintiffs are and at all times hereinafter mentioned were partners in business, doing business under the firm name of Evans, Coleman & Evans.

That the defendant Standard Portland Cement Corporation is and at all the times hereinafter mentioned was a corporation organized and existing under the laws of the State of California and a citizen of California.

That the defendants W. J. Dingee and Irving A. Bachman [1\*] are and at all times hereinafter mentioned were, as plaintiffs are informed and believe, citizens and residents of the State of California, and of the Northern District thereof.

That on the 5th day of May, 1908, the defendant the Standard Portland Cement Corporation made, executed and delivered to the plaintiffs its promissory note in the words and figures following, to wit:

“San Francisco, May 1st, 1908.

For value received the Standard Portland Cement Corporation promises to pay to the order of Evans, Coleman and Evans, on or before one year from and after May 1st, 1908, the sum of Thirty Thousand Dollars, with interest thereon from said day until paid, at the rate of six per cent per annum, payable semi-annually, and if not so paid to be compounded.

STANDARD PORTLAND CEMENT  
CORPORATION,

By WILLIAM J. DINGEE,

Vice-Pres'dt.

By L. F. YOUNG,

Secretary.”

[Seal of Corporation]

And at the same time, and as part of the said transaction, the defendants William J. Dingee and Irving N. Bachman endorsed said promissory note, and also waived presentment, demand, protest and notice of nonpayment of said note. Said endorsement and said waiver are written on the back of said note and

---

\*Page-number appearing at foot of page of original certified Record.

are in the words following, to wit:

“IRVING A. BACHMAN.

WILLIAM J. DINGEE.

For value received, I hereby waive presentment, demand, protest, and notice of non-payment of within note.

WILLIAM J. DINGEE.

IRVING A. BACHMAN.”

Said endorsements were made before said note was delivered to [2] these plaintiffs.

That no part of said promissory note, either principal or interest, has been paid, and the full principal sum of \$30,000, together with interest thereon at the rate of six per cent per annum, compounded as in said note provided for, are due and unpaid.

That the plaintiffs are the owners and holders of said promissory note.

## II.

For a second, further, separate and distinct cause of action the plaintiffs allege:

That the plaintiffs are and at all the times hereinafter mentioned were aliens and residents of British Columbia, and citizens of the Dominion of Canada and of the kingdom of Great Britain, and subjects of King Edward VII, King of Great Britain and Ireland.

That the plaintiffs are and at all times hereinafter mentioned were partners in business, doing business under the firm name of Evans, Coleman & Evans.

That the defendant Standard Portland Cement Corporation is and at all the times hereinafter mentioned was a corporation organized and existing un-

der the laws of the State of California and a citizen of California.

That the defendants W. J. Dingee and Irving A. Bachman are and at all times hereinafter mentioned were, as plaintiffs are informed and believe, citizens and residents of the State of California, and of the Northern District thereof.

That on or about the fifth day of May, 1908, the plaintiffs sold and delivered to the defendants, at their instance and request, certain bonds and stocks, to wit: bonds [3] of the Northwestern Portland Cement Company, a corporation, of the par value of Thirty Thousand Dollars, and Three Hundred shares of the capital stock of the said Northwestern Portland Cement Company, a corporation, of the par value of Thirty Thousand Dollars. That the defendants agreed to pay for said bonds and stocks as the purchase price the sum of \$30,000.

That the defendants have not, nor have any or either of them, paid the said sum of money, or any part thereof, and the whole thereof is due and unpaid, together with legal interest thereon from the said fifth day of May, 1908.

### III.

For a third, further, separate and distinct cause of action plaintiffs allege:

That the plaintiffs are and at all the times hereinafter mentioned were aliens and residents of British Columbia, and citizens of the Dominion of Canada and of the Kingdom of Great Britain, and subjects of King Edward VII, King of Great Britain and Ireland.

That the plaintiffs are and at all times hereinafter mentioned were partners in business, doing business under the firm name of Evans, Coleman & Evans.

That the defendant Standard Portland Cement Corporation is and at all the times hereinafter mentioned was a corporation organized and existing under the laws of the State of California and a citizen of California.

That the defendants W. J. Dingee and Irving A. Bachman are and at all times hereinafter mentioned were, as plaintiffs are informed and believe. citizens and residents of the State of California, and of the Northern District thereof.

That Charles D. Rand is and at all times hereinafter mentioned was an alien and resident of British Columbia, and [4] a citizen of the Dominion of Canada and of the Kingdom of Great Britain, and a subject of King Edward VII, King of Great Britain and Ireland.

That on the fifth day of May, 1908, the defendant the Standard Portland Cement Corporation made, executed and delivered to said Charles D. Rand its promissory note, in the words and figures following, to wit:

“San Francisco, May 1st, 1908.

For value received the Standard Portland Cement Corporation promises to pay to the order of Charles D. Rand, on or before one year from and after May 1st, 1908, the sum of Five Thousand Dollars, with interest thereon from said date until paid, at the rate of six per cent per annum, payable semi-



annually, and if not so paid to be compounded.

STANDARD PORTLAND CEMENT CORPORATION.

By WILLIAM J. DINGEE,

Vice-Pres'dt.

By L. F. YOUNG,

[Seal of Corporation]

Secretary."

And at the same time, and as part of the said transaction, the defendants William J. Dingee and Irving A. Bachman endorsed said promissory note, and also waived presentment, demand, protest and notice of nonpayment of said note. Said endorsement and said waiver are written on the back of said note and are in the words and figures following, to wit:

"IRVING A. BACHMAN.

WILLIAM J. DINGEE.

For value received, I hereby waive presentment, demand, protest, and notice of nonpayment of within note.

WILLIAM J. DINGEE.

IRVING A. BACHMAN."

Said endorsements were made before said note was delivered to [5] said Charles D. Rand.

That no part of said promissory note, either principal or interest, has been paid, and the full principal sum of \$5,000 together with interest thereon at the rate of six per cent per annum, compounded as in said note provided for, are due and unpaid.

That the said Charles D. Rand has assigned and

endorsed said promissory note to these plaintiffs, and these plaintiffs are now the owners and holders thereof.

#### IV.

For a fourth, further, separate and distinct cause of action the plaintiffs allege:

That the plaintiffs are and at all the times hereinafter mentioned were aliens and residents of British Columbia, and citizens of the Dominion of Canada, and of the Kingdom of Great Britain, and subjects of King Edward VII, King of Great Britain and Ireland.

That the plaintiffs are and at all times hereinafter mentioned were partners in business, doing business under the firm name of Evans, Coleman & Evans.

That the defendant Standard Portland Cement Corporation is and at all the times hereinafter mentioned was a corporation organized and existing under the laws of the State of California and a citizen of California.

That the defendants W. J. Dingee and Irving A. Bachman are and at all times hereinafter mentioned were, as plaintiffs are informed and believe, citizens and residents of the State of California, and of the Northern District thereof. [6]

That Charles D. Rand is and at all times hereinafter mentioned was an alien and resident of British Columbia, and a citizen of the Dominion of Canada and of the Kingdom of Great Britain, and a subject of King Edward VII, King of Great Britain and Ireland.

That on or about the fifth day of May, 1908, the

said Charles D. Rand sold and delivered to the defendants, at their instance and request, certain bonds and stocks, to wit: bonds of the Northwestern Portland Cement Company, a corporation, of the par value of Five Thousand Dollars, and Fifty shares of the capital stock of the said Northwestern Portland Cement Company, a corporation, of the par value of Five Thousand Dollars. That at the said time of delivery the defendants agreed to pay said Charles D. Rand for said bonds and stocks the sum of \$5,000.

That the defendants have not, nor have any or either of them, paid the said sum of money, or any part thereof, and the whole thereof is now due and unpaid, together with legal interest thereon from the said fifth day of May, 1908.

That the said Charles D. Rand has assigned to these plaintiffs his claim against the defendants for the said purchase price of said bonds and stocks and these plaintiffs are now the owners and holders of said claim.

#### V.

For a fifth, further, separate and distinct cause of action plaintiffs allege:

That the plaintiffs are and at all the times hereinafter mentioned were aliens and residents of British Columbia, and citizens of the Dominion of Canada and of the Kingdom of Great Britain, and subjects of King Edward VII, King of Great Britain and Ireland. [7]

That the plaintiffs are and at all times hereinafter mentioned were partners in business, doing business under the firm name of Evans, Coleman & Evans.



That the defendant Standard Portland Cement Corporation is and at all the times hereinafter mentioned was a corporation organized and existing under the laws of the State of California and a citizen of California.

That the defendants W. J. Dingee and Irving A. Bachman are and at all times hereinafter mentioned were, as plaintiffs are informed and believe, citizens and residents of the State of California, and of the Northern District thereof.

That T. R. Stockett, Trustee, is and at all times hereinafter mentioned was an alien and resident of British Columbia, and a citizen of the Dominion of Canada and of the Kingdom of Great Britain, and a subject of King Edward VII, King of Great Britain and Ireland.

That on the fifth day of May, 1908, the defendant the Standard Portland Cement Corporation made, executed and delivered to said T. R. Stockett, Trustee, its promissory note in the words and figures following, to wit:

“San Francisco, May 1st, 1908.

For value received the Standard Portland Cement Corporation promises to pay to the order of T. R. Stockett, Trustee, on or before one year from and after May 1st, 1908, the sum of Three Thousand Dollars, with interest thereon from said date until paid, at the rate of six per cent per annum, payable semi-

annually, and if not so paid to be compounded.

STANDARD PORTLAND CEMENT CORPORATION.

By WILLIAM J. DINGEE,  
Vice-Pres'dt.  
By L. F. YOUNG,  
Secretary."

[Seal of Corporation] [8]

And at the same time, and as part of the said transaction, the defendants William J. Dingee and Irving A. Bachman endorsed said promissory note, and also waived presentment, demand, protest and notice of nonpayment of said note. Said endorsement and said waiver are written on the back of said note and are in the words and figures following, to wit:

"IRVING A. BACHMAN.  
WILLIAM J. DINGEE.

For value received, I hereby waive presentment, demand, protest, and notice of nonpayment of within note.

WILLIAM J. DINGEE.  
IRVING A. BACHMAN."

Said endorsements were made before said note was delivered to said T. R. Stockett, Trustee.

That no part of said promissory note, either principal or interest, has been paid, and the full principal sum of Three Thousand Dollars, together with interest thereon at the rate of six per cent per annum, compounded as in said note provided for, are due and unpaid.

That the said T. R. Stockett, Trustee, has assigned

and endorsed said promissory note to these plaintiffs and these plaintiffs are now the owners and holders thereof.

## VI.

For a sixth, further, separate and distinct cause of action the plaintiffs allege:

That the plaintiffs are and at all the times hereinafter mentioned were aliens and residents of British Columbia, and citizens of the Dominion of Canada, and of the Kingdom of Great Britain, and subjects of King Edward VII, King of Great Britain and Ireland. [9]

That the plaintiffs are and at all times hereinafter mentioned were partners in business, doing business under the firm name of Evans, Coleman & Evans.

That the defendant Standard Portland Cement Corporation is and at all the times hereinafter mentioned was a corporation organized and existing under the laws of the State of California and a citizen of California.

That the defendants W. J. Dingee and Irving A. Bachman are and at all times hereinafter mentioned were, as plaintiffs are informed and believe, citizens and residents of the State of California, and of the Northern District thereof.

That T. R. Stockett, Trustee, is and at all times hereinafter mentioned was an alien and resident of British Columbia, and a citizen of the Dominion of Canada and of the Kingdom of Great Britain, and a subject of King Edward VII, King of Great Britain and Ireland.

That on or about the fifth day of May, 1908, the

said T. R. Stockett, Trustee, sold and delivered to the defendants, at their instance and request, certain bonds and stocks, to wit: bonds of the Northwestern Portland Cement Company, a corporation, of the par value of Three Thousand Dollars, and thirty shares of the capital stock of the said Northwestern Portland Cement Company, a corporation, of the par value of Three Thousand Dollars. That at the said time of delivery *and* defendants agreed to pay said T. R. Stockett, Trustee, for said bonds and stocks the sum of \$3,000.

That the defendants have not, nor have any or either of them paid the said sum of money, or any part thereof, and the whole thereof is now due and unpaid, together with legal interest thereon from the said fifth day of May, 1908. [10]

That the said T. R. Stockett, Trustee, has assigned to these plaintiffs his claim against the defendant for the said purchase price of said bonds and stocks and these plaintiffs are now the owners and holders of said claim.

## VII.

For a seventh, further, separate and distinct cause of action these plaintiffs allege:

That the plaintiffs are and at all the times hereinafter mentioned were aliens and residents of British Columbia, and citizens of the Dominion of Canada and of the Kingdom of Great Britain, and subjects of King Edward VII, King of Great Britain and Ireland.

That the plaintiffs are and at all times hereinafter mentioned were partners in business, doing business

under the firm name of Evans, Coleman & Evans.

That the defendants Standard Portland Cement Corporation is and at all the times hereinafter mentioned was a corporation organized and existing under the laws of the State of California and a citizen of California.

That the defendants W. J. Dingee and Irving A. Bachman are and at all times hereinafter mentioned were, as plaintiffs are informed and believe, citizens and residents of the State of California, and of the Northern District thereof.

That Thomas Graham is and at all times hereinafter mentioned was an alien and resident of British Columbia, and a citizen of the Dominion of Canada and of the Kingdom of Great Britain, and a subject of King Edward VII, King of Great Britain and Ireland.

That on the fifth day of May, 1908, the defendant, [11] the Standard Portland Cement Corporation made, executed and delivered to said Thomas Graham its promissory note in the words and figures following, to wit:

“San Francisco, May 1st, 1908.

For value received the Standard Portland Cement Corporation promises to pay to the order of Thomas Graham, on or before one year from and after May 1st, 1908, the sum of One Thousand Dollars, with interest thereon from said date until paid, at the rate of six per cent per annum, payable semi-annually,



and if not so paid to be compounded.

STANDARD PORTLAND CEMENT CORPORATION.

By WILLIAM J. DINGEE,  
Vice-Pres'dt.

By L. F. YOUNG,

[Seal of Corporation]                      Secretary."

And at the same time, and as part of the said transaction, the defendants William J. Dingee and Irving N. Bachman endorsed said promissory note, and also waived presentment, demand, protest and notice of nonpayment of said note. Said endorsement and said waiver are written on the back of said note and are in the words and figures following, to wit:

"IRVING A. BACHMAN.

WILLIAM J. DINGEE.

For value received, I hereby waive presentment, demand, protest, and notice of nonpayment of within note.

WILLIAM J. DINGEE.

IRVING A. BACHMAN."

Said endorsements were made before said note was delivered to said Thomas Graham.

That no part of said promissory note, either principal or interest, has been paid, and the full principal sum of [12] One Thousand Dollars, together with interest thereon at the rate of six per cent per annum, compounded as in said note provided for, are due and unpaid.

That the said Thomas Graham has assigned and endorsed said promissory note to these plaintiffs and

these plaintiffs are now the owners and holders thereof.

VIII.

For an eighth, further, separate, and distinct cause of action the plaintiffs allege :

That the plaintiffs are and at all the times hereinafter mentioned were aliens and residents of British Columbia, and citizens of the Dominion of Canada, and of the Kingdom of Great Britain, and subjects of King Edward VII, King of Great Britain and Ireland.

That the plaintiffs are and at all the times hereinafter mentioned were partners in business, doing business under the firm name of Evans, Coleman and Evans.

That the defendant Standard Portland Cement Corporation is and at all the times hereinafter mentioned was a corporation organized and existing under the laws of the State of California and a citizen of California.

That the defendants W. J. Dingee and Irving A. Bachman are and at all times hereinafter mentioned were, as plaintiffs are informed and believe, citizens and residents of the State of California, and of the Northern District thereof.

That Thomas Graham is and at all times hereinafter mentioned was an alien and resident of British Columbia, and a citizen of the Dominion of Canada and of the Kingdom of Great Britain and a subject of King Edward VII, King of Great Britain and Ireland. [13]

That on or about the fifth day of May, 1908, the

said Thomas Graham sold and delivered to the defendants, at their instance and request, certain bonds and stocks, to wit: bonds of the Northwestern Portland Cement Company, a corporation, of the par value of One Thousand Dollars, and ten shares of the capital stock of the said Northwestern Portland Cement Company, a corporation, of the par value of One Thousand Dollars. That at the said time of delivery the defendants agreed to pay said Thomas Graham for said bonds and stocks the sum of \$1000.

That the defendants have not, nor have any or either of them paid the said sum of money, or any part thereof, and the whole thereof is now due and unpaid, together with legal interest thereon from the said fifth day of May, 1908.

That the said Thomas Graham has assigned to these plaintiffs his claim against the defendants for the said purchase price of said bonds and stocks and these plaintiffs are now the owners and holders of said claim.

WHEREFORE plaintiffs pray judgment against the defendants and each of them for the sum of Forty Thousand Dollars (\$40,000), together with interest thereon from the first day of May, 1908, until date of judgment, at the rate of six per cent per annum, compounded semi-annually, and for costs of suit; and for such other relief as it may appear to the Court the plaintiffs are entitled to.

WARREN OLNEY,  
OLNEY, PRINGLE & MANNON,  
Attorneys for Plaintiffs.



[Endorsed]: Filed May 22, 1909. Southard Hoffman, Clerk. By J. A. Schaertzer, Deputy Clerk.  
[14]

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**Summons.**

UNITED STATES OF AMERICA.

*Circuit Court of the United States, Ninth Judicial  
Circuit, Northern District of California.*

ERNEST E. EVANS, ——— COLEMAN, and  
PERCY W. EVANS, Partners Doing Business Under the Firm Name of EVANS,  
COLEMAN & EVANS,

Plaintiffs,

vs.

STANDARD PORTLAND CEMENT CORPORATION, a Corporation, WILLIAM J. DINGEE and IRVING A. BACHMAN,

Defendants.

Action brought in the said Circuit Court and the complaint filed in the office of the Clerk of the said Circuit Court, in the City and County of San Francisco.

WARREN OLNEY,  
OLNEY, PRINGLE & MANNON,  
1236 Merchants' Exchange Building,  
San Francisco, California,  
Attorney for Plaintiff.

To the President of the United States of America,  
 Greeting: To Standard Portland Cement Corporation, a Corporation, William J. Dingee and Irving A. Bachman, Defendants.

You are hereby directed to appear and answer the Complaint in an action entitled as above, brought against you in the Circuit Court of the United States, Ninth Judicial Circuit, in and for the Northern District of California, within ten days after the service on you of this Summons—if served within this county; or within thirty days if served elsewhere.

And you are hereby notified that unless you appear and answer as above required, the said plaintiffs will take judgment for any money or damages demanded in the complaint, as arising upon contract, or they will apply to the Court for any other relief demanded in the complaint. [15]

WITNESS the Honorable MELVILLE W. FULLER, Chief Justice of the United States, this 22d day of May, in the year of our Lord one thousand nine hundred and nine and of our independence the 133d.

[Seal]

SOUTHARD HOFFMAN,

Clerk.

By J. A. Schaertzer,

Deputy Clerk.

United States Marshal's office,  
 Northern District of California.

I hereby certify that I received the within Summons on the 22d day of May, 1909, and personally served the same on the 22d day of May, 1909, upon

Irving A. Bachman, one of the defendants therein named, by delivering to and leaving with Irving A. Bachman, one of said defendants named therein, personally, at the City and County of San Francisco in said District, a copy thereof, together with a copy of the Complaint, attached thereto.

C. T. ELLIOTT,

U. S. Marshal.

By Elmo Warner,

Office Deputy.

Dated at San Francisco this 22d day of May, 1909.

United States Marshal's Office,  
Northern District of California.

I hereby certify that I received the hereunto annexed Summons on the 22d day of May, 1909, and personally served the same upon the Standard Portland Cement Corporation, a Corporation, one of the herein named defendants, by handing to and leaving an attested [16] copy of the annexed Summons, together with a copy of the Complaint attached thereto, with L. F. Young, the Secretary of the said Standard Portland Cement Corporation, a Corporation, personally, in the City and County of San Francisco, State and Northern District of California, and upon William J. Dingee, one of the herein named defendants, by handing to and leaving an attested copy of the annexed Summons, together with a copy of the Complaint attached thereto, with said William J. Dingee, personally, on the 24th day of May, 1909,

20      *Standard Portland Cement Corporation*

in the City and County of San Francisco, in said District.

C. T. ELLIOTT,  
United States Marshal.  
By B. F. Towle,  
Office Deputy Marshal.

Dated at San Francisco, California, this 24th day of May, 1909.

[Endorsed]: Filed May 24, 1909. Southard Hoffman, Clerk. By J. A. Schaertzer, Deputy Clerk.  
[17]

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*In the Circuit Court of the United States, Ninth Circuit, in and for the Northern District of California.*

ERNEST E. EVANS, ——— COLEMAN, and  
PERCY W. EVANS, Partners Doing Business Under the Firm Name of EVANS,  
COLEMAN & EVANS,

Plaintiffs,

vs.

STANDARD PORTLAND CEMENT CORPORATION, a Corporation, WILLIAM J. DINGEE and IRVING A. BACHMAN.

Defendants.

**Answer of Defendant Standard Portland Cement Corporation, a Corporation.**

Now comes Standard Portland Cement Corporation, a Corporation, one of the defendants named in the above-entitled action, and for answer to the com-

plaint of plaintiff on file herein, admits, denies and alleges as follows:

I.

Alleges that it has no information or belief upon the subject sufficient to enable it to answer, and basing its denial upon that ground, denies that the plaintiffs, or either or any of them, is or are, or was or were, at all or any of the times in said complaint mentioned, aliens or residents of British Columbia, or citizens of the Dominion of Canada, or of the Kingdom of Great Britain, or subject of King Edward VII, King of Great Britain and Ireland;

Denies that said plaintiffs, or any or either of them, are, or at all or any of the times in said complaint mentioned were, partners in business, or doing business under the firm name of Evans, Coleman and Evans; alleges that this defendant has no information or belief upon the subject sufficient to enable it [18] to answer, and basing its denial upon that ground, denies that defendants William J. Dingee and Irving A. Bachman, or defendant William J. Dingee or defendant Irving A. Bachman, or either of them, are, or at all or any of the times in said complaint mentioned were, citizens or residents of the State of California, or of the Northern District thereof.

Denies that on the 5th day of May, 1908, or at any other time, or at all, this defendant Standard Portland Cement Corporation made or executed or delivered to said Evans, Coleman & Evans, or any or either of them, otherwise than as hereinafter alleged, its promissory or other note in the words and figures

or words or figures set forth and contained in the first cause of action in said complaint attempted to be alleged.

Alleges that it has no information or belief upon the subject sufficient to enable it to answer, and basing its denial upon that ground, denies that at the same or any time, or as part of the same or any transaction, the defendants William J. Dingee or Irving A. Bachman, or either or both of them, endorsed said or any promissory note or notes, and denies that said defendants, or either or both of them, waived presentment or demand or protest or notice of nonpayment of said or any note; and denies that said endorsement, or any endorsement, or said waiver or any waiver, was written on the back of said or any note or notes, or was in the words or any words set forth and described in the first cause of action in said complaint attempted to be alleged; and denies that any endorsement or waiver was endorsed upon said or any promissory note before said note was delivered to said Evans, Coleman & Evans, or at any other time or at all, except as hereinafter alleged.

Admits that no part of said alleged promissory note, either of principal or interest, has been paid, but denies that the full or any principal sum of \$30,000, or any part thereof, with interest [19] at the rate of six per cent per annum, or together with any interest, compounded as in said alleged note alleged to have been provided, or otherwise, or at all, are due and owing, or due or owing, from this defendant to said plaintiff or any one else.

Alleges that this defendant has no information or



belief upon the subject sufficient to enable it to answer, and basing its denial upon that ground, denies that the said plaintiffs or any or either of them are the owners and holders or owners or holders of said promissory note.

## II.

Answering the second alleged cause of action in said complaint attempted to be set forth, this defendant alleges that it has no information or belief upon the subject sufficient to enable it to answer, and basing its denial upon that ground, denies that the plaintiffs, or either or any of them, is or are, or was or were, at all or any of the times in said complaint mentioned, aliens or residents of British Columbia, or citizens of the Dominion of Canada, or of the Kingdom of Great Britain, or subjects of King Edward VII, King of Great Britain and Ireland.

Denies that said plaintiffs, or any or either of them, are, or at all or any of the times in said complaint mentioned were, partners in business, or doing business under the firm name of Evans, Coleman & Evans; alleges that this defendant has no information or belief upon the subject sufficient to enable it to answer, and basing its denial upon that ground, denies that defendants William J. Dingee and Irving A. Bachman, or defendant William J. Dingee or defendant Irving A. Bachman, or either of them, are, or at all or any of the times in said complaint mentioned were, citizens or residents of the State of California, or of the Northern District thereof. [20]

Denies that on or about the 5th day of May, 1908, or at any other time, or at all, said plaintiffs, or any

or either of them, sold or delivered to this defendant at its special instance and request, or special instance or request, or otherwise or at all certain or any bonds and stocks or bonds or stocks, to wit, any bond or bonds of the Northwestern Portland Cement Company, a corporation, of the par or other value of \$30,000, or any bond or bonds whatsoever; and denies that said plaintiffs, or any or either of them, did in any manner or at all sell or deliver to this defendant 300 or any number of shares of the capital or other stock of the said Northwestern Portland Cement Company, a corporation, or of any company, of the par or other value of \$30,000, or any share or shares of stock of any value whatsoever, or any share or shares of stock of said Northwestern Portland Cement Company, or of any company, except as hereinafter alleged; denies that at the said time of the alleged delivery of said bonds or stocks or at any other time or at all this defendant agreed to pay for said bonds or for said stocks or for either or any of them the sum of \$30,000, or any part thereof, except as hereinafter alleged; admits that this defendant has not paid the said sum of money or any part thereof, but denies that the whole or any part thereof is now or at any time has been due or owing from this defendant to said Evans, Coleman & Evans, or either or any of them, or to anyone else, together with legal or any interest thereon, from the said 5th day of May, 1908, or any other time or at all.

### III.

Answering the third alleged cause of action in said complaint attempted to be set forth, this defendant



alleges that it has no information or belief upon the subject sufficient to enable it to answer, and basing its denial upon that ground denies that the plaintiffs, or either or any of them, is or are, or was or were, at all or any of the times in said [21] complaint mentioned, aliens or residents of British Columbia, or citizens of the Dominion of Canada, or of the Kingdom of Great Britain, or subjects of King Edward VII, King of Great Britain and Ireland.

Denies that said plaintiffs, or any or either of them, are, or at all or any of the times in said complaint mentioned were, partners in business, or doing business under the firm name of Evans, Coleman and Evans; alleges that this defendant has no information or belief upon the subject sufficient to enable it to answer, and basing its denial upon that ground, denies that defendants William J. Dingee and Irving A. Bachman, or defendant William J. Dingee or defendant Irving A. Bachman, or either of them, are, or at all or any of the times in said complaint mentioned were, citizens, or residents of the State of California, or of the Northern District thereof.

Alleges that it has no information or belief upon the subject sufficient to enable it to answer, and basing its denial upon that ground, denies that Charles D. Rand is, or at all or any of the times in said complaint mentioned was, an alien or resident of British Columbia, or a citizen of the Dominion of Canada or of the Kingdom of Great Britain and Ireland.

Denies that on the 5th day of May, 1908, or at any other time or at all, this defendant Standard Port-

land Cement Corporation made or executed or delivered to said Charles D. Rand, otherwise than as hereinafter alleged, its promissory or other note in the words and figures or words or figures set forth and contained in the third cause of action in said complaint attempted to be alleged.

Alleges that it has no information or belief upon the subject sufficient to enable it to answer, and basing its denial upon that ground, denies that at the same, or any time, or as part of the same or any transaction, the defendant William J. Dingee [22] or Irving A. Bachman, or either or both of them, endorsed said or any promissory note or notes, and denies that said defendants, or either or both of them, waived presentment or demand or protest or notice of nonpayment of said or any note; and denies that said endorsement, or any endorsement, or said waiver or any waiver, was written on the back of said or any note or notes, or was in the words or any words set forth and described in the third cause of action in said complaint attempted to be alleged; and denies that any endorsement or waiver was endorsed upon said or any promissory note before said note was delivered to said Charles D. Rand, or at any other time or at all, except as hereinafter alleged.

Admits that no part of said alleged promissory note, either of principal or interest, has been paid, but denies that the full or any principal sum of \$5,000, or any part thereof, with interest at the rate of six per cent per annum, or together with any interest, compounded as in said alleged note alleged to have been provided, or otherwise, or at all, are due

and owing, or due or owing, from this defendant to said plaintiff or anyone else.

Alleges that this defendant has no information or belief upon the subject sufficient to enable it to answer, and basing its denial upon that ground, denies that the said plaintiffs, or any or either of them, are the owners and holders or owners or holders of said promissory note.

Alleges that this defendant has no information or belief upon the subject sufficient to enable it to answer, and basing its denial upon that ground, denies that said Charles D. Rand has assigned and endorsed or assigned or endorsed to said plaintiffs or either or any of them, or has assigned or endorsed at all said or any promissory note or notes; denies that said plaintiffs, or either or any of them, are now the owners and holders or owners or holders thereof. [23]

#### IV.

Answering the fourth alleged cause of action in said complaint attempted to be set forth, this defendant alleged that it has no information or belief upon the subject sufficient to enable it to answer, and basing its denial upon that ground, denies that the plaintiffs, or either or any of them, is or are, or was or were, at all or any of the times in said complaint mentioned, aliens or residents of British Columbia, or citizens of the Dominion of Canada, or of the Kingdom of Great Britain, or subjects of King Edward VII, King of Great Britain and Ireland.

Denies that said plaintiffs, or any or either of them, are, or at all or any of the times in said complaint mentioned were, partners in business, or doing

business under the firm name of Evans, Coleman & Evans; alleges that this defendant has no information or belief upon the subject sufficient to enable it to answer, and basing its denial upon that ground, denies that defendants William J. Dingee and Irving A. Bachman, or defendant William J. Dingee or defendant Irving A. Bachman, or either of them, are, or at all or any of the times in said complaint mentioned were, citizens or residents of the State of California, or of the Northern District thereof.

Alleges that it has no information or belief upon the subject sufficient to enable it to answer, and basing its denial upon that ground, denies that Charles D. Rand is, or at all or any of the times in said complaint mentioned was, an alien or resident of British Columbia, or a citizen of the Dominion of Canada or of the Kingdom of Great Britain and Ireland.

Denies that on or about the 5th day of May, 1908, or at any other time, or at all, said plaintiffs, or any or either of them, sold or delivered to this defendant at its special instance and request, or special instance or request, or otherwise or at all, [24] certain or any bonds and stocks or bonds or stocks, to wit, any bond or bonds of the Northwestern Portland Cement Company, a corporation, of the par or other value of \$5,000, or any bond or bonds whatsoever; and denies that said plaintiffs, or any or either of them, did in any manner or at all sell or deliver to this defendant 50 or any number of shares of the capital or other stock of the said Northwestern Portland Cement Company, a corporation, or of any company, of the

par or other value of \$5,000, or any share or shares of stock of any value whatsoever, or any share or shares of stock of said Northwestern Portland Cement Company, or of any company, except as hereinafter alleged; denies that at the said time of the alleged delivery of said bonds or stocks or at any other time or at all this defendant agreed to pay for said bonds or for said stocks or for either or any of them the sum of \$5,000, or any part thereof, except as hereinafter alleged; admits that this defendant has not paid the said sum of money or any part thereof, but denies that the whole or any part thereof is now or at any time has been due or owing from this defendant to said Charles D. Rand, or to anyone else, together with legal or any interest thereon, from the said 5th day of May, 1908, or any other time or at all.

Alleges that this defendant has no information or belief upon the subject sufficient to enable it to answer, and basing its denial upon that ground, denies that said Charles D. Rand has assigned to the said plaintiffs, or has assigned at all his claim against this defendant for the alleged purchase price of said bonds or stocks, or either or any of them, and denies that said plaintiffs are now, or ever have been, the owners or holders of said claim.

#### V.

Answering the fifth alleged cause of action in said complaint attempted to be set forth, this defendant alleges that [25] it has no information or belief upon the subject sufficient to enable it to answer, and basing its denial upon that ground denies that the plaintiffs, or either or any of them, is or are, or was



or were, at all or any of the times in said complaint mentioned, aliens or residents of British Columbia, or citizens of the Dominion of Canada, or of the Kingdom of Great Britain, or subjects of King Edward VII, King of Great Britain and Ireland.

Denies that said plaintiffs, or any or either of them, are, or at all or any of the times in said complaint mentioned were, partners in business, or doing business under the firm name of Evans, Coleman & Evans; alleged that this defendant has no information or belief upon the subject sufficient to enable it to answer, and basing its denial upon that ground, denies that defendant William J. Dingee and Irving A. Bachman, or defendant William J. Dingee or defendant Irving A. Bachman, or either of them are, or at all or any of the times in said complaint mentioned were, citizens or residents of the State of California, or of the Northern District thereof.

Alleges that it has no information or belief upon the subject sufficient to enable it to answer, and basing its denial upon that ground, denies that T. R. Stockett, Trustee, is or at all or any of the times in said complaint mentioned was, an alien or resident of British Columbia, or a citizen of the Dominion of Canada or of the Kingdom of Great Britain and Ireland.

Denies that on the 5th day of May, 1908, or at any other time or at all, this defendant Standard Portland Cement Corporation made or executed or delivered to said T. R. Stockett, Trustee, otherwise than as hereinafter alleged, its promissory or other note in the words and figures or words or figures set

forth and contained in the fifth cause of action in said complaint attempted to be alleged. [26]

Alleges that it has no information or belief upon the subject sufficient to enable it to answer, and basing its denial upon that ground, denies that at the same, or any time, or as a part of the same or any transaction, the defendants William J. Dingee or Irving A. Bachman, or either or both of them, endorsed said or any promissory note or notes, and denies that said defendants, or either or both of them, waived presentment or demand or protest or notice of nonpayment of said or any note; and denies that said endorsement, or any endorsement, or said waiver or any waiver, was written on the back of said or any note or notes, or was in the words or any words set forth and described in the fifth cause of action in said complaint attempted to be alleged; and denies that any endorsement or waiver was endorsed upon said or any promissory note before said note was delivered to said T. R. Stockett, Trustee, or at any other time or at all, except as hereinafter alleged.

Admits that no part of said alleged promissory note, either of principal or interest, has been paid, but denies that the full or any principal sum of \$3,000 or any part thereof, with interest at the rate of six per cent per annum, or together with any interest, compounded as in said alleged note alleged to have been provided, or otherwise, or at all, are due and owing, or due or owing, from this defendant to said plaintiff or anyone else.

Alleges that this defendant has no information or belief upon the subject sufficient to enable it to an-

swer, and basing its denial upon that ground, denies that the said plaintiffs or any or either of them are the owners and holders or owners or holders of said promissory note.

Alleges that this defendant has no information or belief upon the subject sufficient to enable it to answer, and basing its denial upon that ground, denies that said T. R. Stockett, Trustee, has assigned and endorsed or assigned or endorsed to [27] said plaintiffs or either or any of them, or has assigned or endorsed at all said or any promissory note or notes; denies that said plaintiffs or either or any of them are now the owners and holders or owners or holders thereof.

## VI.

Answering the sixth alleged cause of action in said complaint attempted to be set forth, this defendant alleges that it has no information or belief upon the subject sufficient to enable it to answer, and basing its denial upon that ground denies that the plaintiffs, or either or any of them, is or are, or was or were, at all or any of the times in said complaint mentioned, aliens or residents of British Columbia, or citizens of the Dominion of Canada, or of the Kingdom of Great Britain, or subjects of King Edward VII, King of Great Britain and Ireland.

Denies that said plaintiffs, or any or either of them are, or at all or any of the times in said complaint mentioned were, partners in business, or doing business under the firm name of Evans, Coleman & Evans; alleges that this defendant has no information or belief upon the subject sufficient to enable it



to answer, and basing its denial upon that ground, denies that defendants Willaim J. Dingee and Irving A. Bachman, or defendant William J. Dingee or defendant Irving A. Bachman, or either of them, are, or at all or any of the times in said complaint mentioned were, citizens or residents of the State of California, or of the Northern District thereof.

Alleges that it has no information or belief upon the subject sufficient to enable it to answer, and basing its denial upon that ground, denies that T. R. Stockett, Trustee, is or at all or any of the times in said complaint mentioned was, an alien or resident of British Columbia, or a citizen of the Dominion of Canada or of the Kingdom of Great Britain and Ireland. [28]

Denies that on or about the 5th day of May, 1908, or at any other time or at all, said plaintiffs or any or either of them sold or delivered to this defendant at its special instance and request, or special instance or request, or otherwise or at all certain or any bonds and stocks or bonds or stocks, to wit, any bond or bonds of the Northwestern Portland Cement Company, a corporation, of the par or other value of \$3,000, or any bond or bonds whatsoever; and denies that said plaintiffs, or any or either of them, did in any manner or at all sell or deliver to this defendant 30 or any number of shares of the capital or other stock of the said Northwestern Portland Cement Company, a corporation, or of any company, of the par or other value of \$3,000, or any share or shares of stock of any value whatsoever, or any share or shares of stock of said Northwestern Portland

Cement Company, or of any company, except as hereinafter alleged; denies that at the said time of the alleged delivery of said bonds or stocks or at any other time or at all this defendant agreed to pay for said bonds or for said stocks or for either or any of them the sum of \$3,000, or any part thereof, except as hereinafter alleged; admits that this defendant has not paid the said sum of money or any part thereof, but denies that the whole or any part thereof is now or at any time has been due or owing from this defendant to said T. R. Stockwell, Trustee, or to anyone else, together with legal or any interest thereon, from the said 5th day of May, 1908, or any other time or at all.

Alleges that this defendant has no information or belief upon the subject sufficient to enable it to answer, and basing its denial upon that ground, denies that said T. R. Stockett, Trustee, has assigned to the said plaintiffs, or has assigned at all his claim against this defendant for the alleged purchase price of said bonds or stocks, or either or any of them, and denies that said plaintiffs are now, or ever have been, the owners or holders of said claim. [29]

## VII.

Answering the seventh alleged cause of action in said complaint attempted to be set forth, this defendant alleges that it has no information or belief upon the subject sufficient to enable it to answer, and basing its denial upon that ground denies that the plaintiffs, or either or any of them is or are, or was or were, at all or any of the times in said complaint mentioned, aliens or residents of British Columbia,

or citizens of the Dominion of Canada, or of the Kingdom of Great Britain, or subjects of King Edward VII, King of Great Britain and Ireland.

Denies that said plaintiffs, or any or either of them are, or at all or any of the times in said complaint mentioned were, partners in business, or doing business under the firm name of Evans, Coleman & Evans; alleges that this defendant has no information or belief upon the subject sufficient to enable it to answer, and basing its denial upon that ground, denies that defendants William J. Dingee and Irving A. Bachman, or defendant William J. Dingee or defendant Irving A. Bachman, or either of them, are, or at all or any of the times in said complaint mentioned were, citizens or residents of the State of California, or of the Northern District thereof.

Alleges that it has no information or belief upon the subject sufficient to enable it to answer, and basing its denial upon that ground, denies that Thomas Graham is or at all or any of the times in said complaint mentioned was, an alien or resident of British Columbia, or a citizen of the Dominion of Canada or of the Kingdom of Great Britain and Ireland.

Denies that on the 5th day of May, 1908, or at any other time or at all, this defendant Standard Portland Cement Corporation made or executed or delivered to said Thomas Graham, otherwise than as hereinafter alleged, its promissory or other note in the words and figures or words or figures set forth and contained [30] in the seventh cause of action in said complaint attempted to be alleged.

Alleges that it has no information or belief upon the subject sufficient to enable it to answer, and basing its denial upon that ground, denies that at the same, or any time, or as part of the same or any transaction, the defendants William J. Dingee or Irving A. Bachman, or either or both of them, endorsed said or any promissory note or notes, and denies that said defendants, or either or both of them, waived presentment or demand or protest or notice of nonpayment of said or any note; and denies that said endorsement, or any endorsement, or said waiver or any waiver, was written on the back of said or any note or notes, or was in the words or any words set forth and described in the seventh cause of action in said complaint attempted to be alleged; and denies that any endorsement or waiver was endorsed upon said or any promissory note before said note was delivered to said Thomas Graham, or at any other time or at all, except as hereinafter alleged.

Admits that no part of said alleged promissory note, either of principal or interest, has been paid, but denies that the full or any principal sum of \$1,000, or any part thereof, with interest at the rate of six per cent per annum, or together with any interest, compounded as in said alleged note alleged to have been provided, or otherwise, or at all, are due and owing, or due or owing, from this defendant to said plaintiff or anyone else.

Alleges that this defendant has no information or belief upon the subject sufficient to enable it to answer, and basing its denial upon that ground, denies

that the said plaintiffs or any or either of them are the owners and holders or owners or holders of said promissory note.

Alleges that this defendant has no information or belief upon the subject sufficient to enable it to answer, and basing [31] its denial upon that ground, denies that said Thomas Graham has assigned and endorsed or assigned or endorsed to said plaintiffs or either or any of them, or has assigned or endorsed at all said or any promissory note or notes; denies that said plaintiffs or either or any of them are now the owners and holders or owners or holders thereof.

### VIII.

Answering the eighth alleged cause of action in said complaint attempted to be set forth, this defendant alleges that it has no information or belief upon the subject sufficient to enable it to answer, and basing its denial upon that ground denies that the plaintiffs, or either or any of them is or are, or was or were, at all or any of the times in said complaint mentioned, aliens or residents of British Columbia, or citizens of the Dominion of Canada, or of the Kingdom of Great Britain, or subjects of King Edward VII, King of Great Britain and Ireland;

Denies that said plaintiffs, or any or either of them are, or at all or any of the times in said complaint mentioned were, partners in business, or doing business under the firm name of Evans, Coleman & Evans; alleges that this defendant has no information or belief upon the subject sufficient to enable it to answer, and basing its denial upon that ground,



denies that defendants William J. Dingee and Irving A. Bachman, or defendant William J. Dingee or defendant Irving A. Bachman, or either of them, are, or at all or any of the times in said complaint mentioned were, citizens or residents of the State of California, or of the Northern District thereof.

Alleges that it has no information or belief upon the subject sufficient to enable it to answer, and basing its denial upon that ground, denies that Thomas Graham is or at all or any of the times in said complaint mentioned was, an alien or resident of British Columbia, or a citizen of the Dominion of Canada [32] or of the Kingdom of Great Britain and Ireland.

Denies that on or about the 5th day of May, 1908, or at any other time or at all said plaintiffs or any or either of them sold or delivered to this defendant at its special instance and request, or special instance or request, or otherwise or at all certain or any bonds and stocks, or bonds or stocks, to wit, any bond or bonds of the Northwestern Portland Cement Company, a corporation, of the par or other value of \$1,000, or any bond or bonds whatsoever; and denies that said plaintiffs or any or either of them did in any manner or at all sell or deliver to this defendant 10 or any number of shares of the capital or other stock of the said Northwestern Portland Cement Company, a corporation, or of any company, of the par or other value of \$1,000, or any share or shares of stock of any value whatsoever, or any share or shares of stock of said Northwestern Portland Cement Company, or of any company, except as

hereinafter alleged; denies that at the said time of the alleged delivery of said bonds or stocks or at any other time or at all this defendant agreed to pay for said bonds or for said stocks or for either or any of them the sum of \$1,000, or any part thereof, except as hereinafter alleged; admits that this defendant has not paid the said sum of money or any part thereof, but denies that the whole or any part thereof is now or at any time has been due or owing from this defendant to said Thomas Graham, or to anyone else, together with legal interest thereon, from the said 5th day of May, 1908, or any other time or at all.

Alleges that this defendant has no information or belief upon the subject sufficient to enable it to answer, and basing its denial upon that ground, denies that said Thomas Graham has assigned to the said plaintiffs, or has assigned at all his claim against this defendant for the alleged purchase price of said bonds or stocks, or either or any of them, and denies that said plaintiffs are now, or ever have been, the owners or holders of said claim. [33]

## SECOND.

And as a further, separate and distinct answer and defense to the first, second, third, fourth, fifth, sixth, seventh and eighth alleged causes of action in said complaint attempted to be set forth, this defendant alleges:

### I.

That the Standard Portland Cement Company is now, and ever since the 27th day of January, 1902,



has been, a corporation duly organized and existing under and by virtue of the constitution and laws of the State of California, with a capitalization of \$2,000,000, divided into 20,000 shares of the par value of \$100 per share, with its principal place of business in the City and County of San Francisco, State of California, which said Standard Portland Cement Company, ever since its incorporation as aforesaid down to and until the incorporation of the Standard Portland Cement Corporation, and the assumption by said Standard Portland Cement Corporation of the assets, liabilities and business of said Standard Portland Cement Company, as hereinafter alleged, was engaged in the manufacture and sale of "Portland Cement."

## II.

That this defendant, Standard Portland Cement Corporation, is now, and ever since the 25th day of February, 1907, has been, a corporation duly organized and existing under and by virtue of the constitution and laws of the State of California, with a capitalization of \$4,000,000, divided into 40,000 shares of the par value of \$100 per share, with its principal place of business in the City and County of San Francisco, State of California, which said Standard Portland Cement Corporation, upon its incorporation as aforesaid, purchased all of the assets, including the plant for the manufacture of "Portland Cement," and assumed all of [34] the liabilities of said Standard Portland Cement Company, and assumed the performance of all of the contracts of said Standard Portland Cement Company, and ever since

said date has carried on, and continues now to carry on, the business of the manufacture and sale of "Portland Cement."

### III.

That the Santa Cruz Portland Cement Company is now, and ever since the 2d day of June, 1905, has been, a corporation duly organized and existing under and by virtue of the constitution and laws of the State of California, with a capitalization of \$5,000,000 divided into 50,000 shares of the par value of \$100 per share, with its principal place of business in the City and County of San Francisco, State of California, which said Santa Cruz Portland Cement Company, ever since its incorporation as aforesaid has been, and is now, engaged in the manufacture and sale of "Portland Cement."

### IV.

That the Northwestern Portland Cement Company is now, and ever since the 27th day of August, 1906, has been, a corporation duly organized and existing under and by virtue of the constitution and laws of the State of California, with a capitalization of \$5,000,000, divided into 50,000 shares of the par value of \$100 per share, with its principal place of business in the City and County of San Francisco, State of California.

### V.

That said Standard Portland Cement Company and said Standard Portland Cement Corporation were promoted and organized by defendants William J. Dingee and Irving A. Bachman, and said Santa Cruz Portland Cement Company was promoted and

organized by said defendants William J. Dingee and Irving A. Bachman, with boards of directors consisting of five members and no more; that said William J. Dingee and Irving A. Bachman were the owners and holders [35] or controlled and voted a majority of the capital stock of said Standard Portland Cement Company and of said Santa Cruz Portland Cement Company, and were large holders of the capital stock of said Standard Portland Cement Corporation, and as such controlled and dictated the election of the members of the respective boards of directors of said corporations, and at all elections held for the election thereof, named and elected all of the members of said boards of directors, and procured and caused said William J. Dingee, Irving A. Bachman and one Edward McGary to be elected such members of such boards of directors and of each and all of them; that said William J. Dingee and Irving A. Bachman and Edward McGary, upon the organization of such boards of directors so elected as aforesaid, procured and caused the election of said William J. Dingee as president, and said Irving A. Bachman and said Edward McGary as vice-presidents of said Santa Cruz Portland Cement Company, and procured and caused said Irving A. Bachman to be elected president, and said William J. Dingee and Edward McGary to be elected vice-presidents of said Standard Portland Cement Company and said Standard Portland Cement Corporation; that as such members of said boards of directors and as such officers thereof said William J. Dingee and Irving A. Bachman and

Edward McGary constituted the majority of the boards of directors of said corporations and of each and all of them, and said William J. Dingee, Irving A. Bachman and Edward McGary there possessed and exercised full management and control of said corporations and of each and all of them.

That said Edward McGary, for many years prior to his election to such vice-presidencies as aforesaid, had been in the employ of said William J. Dingee and had been intimately associated with said William J. Dingee in enterprises controlled and managed by said William J. Dingee, and that, as this defendant is informed and believes, and upon such information and belief alleges the fact to be, thereafter the actions of said Edward [36] McGary, as a member of said boards of directors and as such vice-president thereof, were taken and had by said Edward McGary at the instance and request and under the dictation of said William J. Dingee.

#### VI.

That defendant is informed and believes, and upon such information and belief alleges the fact to be, that the Western Fuel Company is a corporation organized and existing under and by virtue of the constitution and laws of the State of California, with its principal place of business in the City and County of San Francisco, where it is authorized by law to engage in, and has been engaged in, among other things, the marketing of "Portland Cement."

#### VII.

That of said Western Fuel Company one John L. Howard was, during the month of March, 1906,

president and general manager, and the plaintiff herein, D. C. Norcross, an employee thereof, was its secretary; that on or about the first day of March, 1906, said William J. Dingee and said Irving A. Bachman and said John L. Howard procured and caused said Standard Portland Cement Company to enter into a contract and agreement with said Western Fuel Company, wherein and whereby said Western Fuel Company was commissioned and appointed the general and exclusive sales agent and undertook the exclusive sale and disposition of the entire output and production of said Standard Portland Cement Company, which said contract of appointment of said Western Fuel Company as such general agent was by its items declared to be and become operative as of said first day of March, 1906, and was to continue in full force and effect until the 31st day of August, 1911, unless sooner terminated as therein provided; that said contract of appointment was so made and executed as aforesaid, subject to the express condition and proviso "that it shall be agreed and understood [37] between the parties to said contract that the said contract may be terminated by the Standard Portland Cement Company at its option in the event that said John L. Howard, now the president of the Western Fuel Company, shall, at any time, or for any reason, cease to be the chief executive officer of said corporation.

#### VIII.

That thereafter, by and with the consent of said Standard Portland Cement Company, procured and caused to be given as aforesaid by said William J.



Dingee and said Irving A. Bachman and said John L. Howard, said contract of appointment of said Western Fuel Company, as such exclusive and general sales agent, was, on or about the 30th day of June, 1906, expressly assigned, transferred and set over unto the Western Building Material Company, a corporation, organized and existing under and by virtue of the constitution and laws of the State of California, of which said Western Building Material Company said John L. Howard was also president and said D. C. Norcross was also secretary, and which said assignment and transfer or said contract and the consent of said Standard Portland Cement Company thereto was made, caused to be given and procured by said William J. Dingee, Irving A. Bachman and John L. Howard, likewise subject to the express condition "that the Standard Portland Cement Corporation shall have the right to terminate said contract at its option, in the event that said John L. Howard shall, at any time or for any reason, cease to be the chief executive officer of the Western Building Material Company."

IX.

That as a result of the said contract of appointment as aforesaid, said John L. Howard, as such chief executive officer and general manager of said Western Fuel Company and of said Western Building Material Company, was given and became possessed of the control of the output and production of the said Standard Portland [38] Cement Company and of the said Standard Portland Cement Corporation, and of the marketing and sale thereof,



and by reason of said exclusive control of said output and production said John L. Howard also became possessed of the only source from which said Standard Portland Cement Company and said Standard Portland Cement Corporation derived their respective incomes, which incomes were derived from the sale of their product and from sales made by said corporations of which said Howard was so president and chief executive officer.

X.

That thereafter and on or about the 1st day of March, 1906, said William J. Dingee and Irving A. Bachman, so controlling said Santa Cruz Portland Cement Company, and said John L. Howard, as President and chief executive officer of said Western Fuel Company, as aforesaid, caused and procured the said Santa Cruz Portland Cement Company and said Western Fuel Company to enter into a contract to continue, while said John L. Howard was such President and chief executive officer of said Western Fuel Company, under the terms and provisions of which said contract said Western Fuel Company was appointed the exclusive and general sales agent for the sale and disposition of the entire product of the said Santa Cruz Portland Cement Company, subject also to the condition that in the event of said John L. Howard ceasing to be the chief executive officer of said Western Fuel Company said contract should, at the option of the said Santa Cruz Portland Cement Company, be terminated, which said contract was thereafter and on or about the 8th day of March, 1906, expressly assigned, trans-

ferred and set over to said Western Building Material Company, subject to the same terms, conditions and proviso.

That said contract also vested in said John L. Howard, as such President and chief executive officer of said corporations, the control of the output and production of said Santa Cruz Portland [39] Cement Company and of the marketing and sale thereof, by reason, of which exclusive control of said output and said production said Howard, as such President and chief executive officer, also became possessed of the control of the only source from which said Santa Cruz Portland Cement Company derived its income.

## XI.

That, as this defendant is informed and believes, and upon such information and belief alleges the fact to be; thereafter and on the 27th day of August, 1906, said William J. Dingee and Irving A. Bachman, in co-operation with and assisted by said John L. Howard, did promote and organize a corporation, known and designated as the Northwestern Portland Cement Company, with a capitalization of five million dollars, divided into 50,000 shares of the par value of \$100 per share, and with a board of directors consisting of five members; that upon the incorporation of said Northwestern Portland Cement Company as aforesaid, said William J. Dingee, Irving A. Bachman and John L. Howard caused and procured the election, and named all the members of said Board of Directors, including the election of said William J. Dingee, Irving A. Bachman and

Edward McGary; that until the 23d day of July, 1908, said William J. Dingee, Irving A. Bachman and Edward McGary constituted the majority of said Board of Directors, and elected said William J. Dingee President and said Irving A. Bachman and Edward McGary Vice-presidents of said corporation, and were possessed of and exercised the entire management of said company and control of the Board of Directors thereof.

## XII.

That, as this defendant is informed and believes, and upon such information and belief alleges the fact to be, said Dingee, Bachman and said John L. Howard caused said Northwestern Portland Cement Company to issue to said Irving A. Bachman 49,995 shares [40] out of a total capitalization of 50,000 shares of the capital stock of said corporation; that thereafter, of said 49,995 shares so issued as afore-said to said Irving A. Bachman, said John L. Howard received 8,000 and more shares, said William J. Dingee received 15,000 and more shares, and said Irving A. Bachman received 15,000 and more shares.

## XIII.

That, as this defendant is informed and believes, and upon such information and belief alleges the fact to be, thereafter said William J. Dingee, said Irving A. Bachman and said John L. Howard caused and procured said Northwestern Portland Cement Company and the stockholders and directors thereof to authorize the incurring of a bonded indebtedness of said Company in the sum of \$2,000,000, represented by 2,000 bonds of the denomination of \$1,000

each, and secured by a mortgage or deed of trust, hypothecating and pledging all of the properties of said company then owned or held or thereafter to be acquired by it for the redemption thereof.

#### XIV.

That, as this defendant is informed and believes, and upon such information and belief alleges the fact to be, it was the intention and purpose of said William J. Dingee, Irving A. Bachman and John L. Howard, in procuring and causing the incorporation and organization of said Northwestern Portland Cement Company that said company should engage in the manufacture and production of "Portland Cement," with its plant and factory situated in the County of Whatcom, State of Washington, upon certain lands theretofore located in part by said Howard in the promotion of said company, and title to which said portion of said lands, through United States patent, was subsequently acquired by said Howard individually; and that it was also the intention and purpose of said William J. Dingee, Irving A. Bachman and John L. Howard in causing and procuring [41] the creation of said bonded indebtedness of said company as aforesaid, and said William J. Dingee, Irving A. Bachman and John L. Howard did cause said Northwestern Portland Cement Company to represent and declare in and by the resolution of the Board of Directors of said corporation authorizing the incurring of said bonded indebtedness, and said William J. Dingee, Irving A. Bachman and John L. Howard did represent and pretend to intending purchasers of said bonds, that

it was the intent and purpose of said company and of said William J. Dingee, Irving A. Bachman and John L. Howard, and that said bonds had been authorized and were being sold, to the end and for the purpose, among other things, of providing moneys to acquire property and to construct and equip the factory and plant of said company.

## XV.

That, as this defendant is informed and believes, and upon such information and belief alleges the fact to be, said William J. Dingee, Irving A. Bachman and John L. Howard procured and caused said Northwestern Portland Cement Company to authorize the immediate issuance and sale of 900 of said bonds numbered consecutively from 1 to 900, both numbers included; that thereupon said Irving A. Bachman did return to the treasury of the Northwestern Portland Cement Company out of said 49,995 shares so issued to said Bachman, as aforesaid, 9,000 shares of the capital stock of said company, with the understanding and agreement that the said 9,000 shares so returned should be reissued, transferred and delivered to the purchasers of said 900 bonds in the proportion of ten shares of said stock for each of said bonds so sold and purchased.

That theretofore said John L. Howard had in his own name on his own behalf, and on behalf of certain individuals and corporations, subscribed for and agreed to purchase 300 of said bonds. [42]

## XVI.

That of said 900 bonds so offered for sale as aforesaid the trustee in said mortgage or deed of trust



named has issued and delivered to said Northwestern Portland Cement Company 400 bonds, numbered consecutively from 1 to 400, both numbers included, and thereafter said Northwestern Portland Cement Company, so managed and controlled as aforesaid, sold and delivered to purchasers thereof 295 of said 400 bonds, the bonds so sold and delivered being numbered consecutively from 1 to 295, both numbers included; that of said 300 bonds so subscribed for and agreed to be purchased by said John L. Howard there were actually sold and delivered to said John L. Howard, or for or on account of his said subscription so made as aforesaid, 100 bonds as follows:

On January 5, 1907, 50 bonds, numbered consecutively from 1 to 50, both numbers included;

On January 18, 1907, 45 bonds, numbered consecutively from 123 to 167, both numbers included; and

On March 14, 1907, 5 of said bonds, numbered consecutively from 213 to 217, both numbers included.

That upon such delivery to said John L. Howard of said bonds as aforesaid, said Northwestern Portland Cement Company did transfer and deliver to said John L. Howard out of and as a part of said 9,000 shares of said stock so returned to the treasurer of said company as aforesaid, ten shares of said stock for each one of said 100 bonds so delivered as aforesaid.

## XVII.

That thereafter and subsequent to the delivery of said bonds to said Howard as aforesaid, said Howard, as this defendant is informed and believes and therefore alleges, did transfer and deliver to Evans, Cole-



man & Evans, 30 of said bonds, to said Charles D. Rand 5 of said bonds, to said T. R. Stockett, Trustee, 3 of said bonds, and to Thomas Graham 1 of said bonds. [43]

## XVIII.

That, as this defendant is informed and believes, and upon such information and belief alleges the fact to be, there was realized from the sale of said 295 bonds so sold and delivered as aforesaid the sum of \$295,000, or thereabouts; that said sum of \$295,000 or thereabouts was not applied by said Northwestern Portland Cement Company to, nor expended in, the acquisition of property or the construction or equipment of said plant or factory, but, on the contrary, the greater portion thereof, the exact amount of which is to this defendant unknown, was diverted to other and different uses and purposes and to the use and benefit of other and different enterprises, which said Dingee and said Bachman controlled, and in which said Howard was interested.

## XIX.

That, as this defendant is informed and believes, and upon such information and belief alleges the fact to be, by reason of the diversion of the funds of said Northwestern Portland Cement Company from the uses and purposes to which said Dingee, and said Bachman had caused the Board of Directors of said company to declare the intention and purpose of said Company to devote the same and had represented to the purchasers of said bonds that the funds realized from the sale thereof would be used, and by reason of the cessation of active operations in the construc-

tion and equipment of said plant, said bonds became and were greatly depreciated in value, and ever since have been and are now and were on the 5th day of May, 1908, without market value.

## XX.

That, as this defendant is informed and believes, and upon such information and belief alleges the fact to be, certain purchasers of said bonds, and more particularly those purchasers of said bonds for and on whose account said bonds so delivered to [44] said John L. Howard had been so purchased as aforesaid, and more particularly Evans, Coleman & Evans, Plaintiffs, who had so purchased through said John L. Howard 30 of said bonds, becoming and being dissatisfied with the action of said William J. Dingee and said Irving A. Bachman in their failure to cause said Northwestern Portland Cement Company to proceed with the acquisition of properties and the construction and equipment of said plant and factory, undertook to and did cause the books and affairs of said Northwestern Portland Cement Company to be investigated and expeted, with the result that said purchasers of said bonds became aware and informed of the diversion of said funds to said other and different enterprises and purposes and of the entire cessation of all operations in the construction and equipment of said plant and factory; that thereafter, and upon the discovery of said diversions and said cessation of operations as aforesaid, said purchasers of said bonds threatened the prosecution of the said officers and members of the Board of Directors of the said Northwestern Portland Cement Com-

pany, and more particularly said William J. Dingee and said Irving A. Bachman, as the President and Vice-president thereof, and demanded that said William J. Dingee and said Irving A. Bachman and said John L. Howard cause and procure said Northwestern Portland Cement Company to redeem and retire said bonds, or that said William J. Dingee and said Irving A. Bachman individually repurchase said bonds and the stock of said Northwestern Portland Cement Company so issued as a bonus as aforesaid, and did then and there demand of said John L. Howard, as the nominal subscriber for and purchaser of said bonds and the person through whom said bonds had been so purchased as aforesaid, that said John L. Howard do undertake for and on behalf of said bondholders, and each and all of them, to induce said Northwestern Portland Cement Company or said William J. Dingee or said Irving A. Bachman to repurchase or redeem said bonds and said stocks.

[45]

## XXI.

That, as this defendant is informed and believes, and upon such information and belief alleges the fact to be, thereupon said John L. Howard, as such representative and agent of said bondholders and more particularly as the representative and agent of said Evans, Coleman & Evans, said Charles D. Rand, said T. R. Stockett Trustee, and said Thomas Graham, and for and on their behalf, did undertake to secure from said William J. Dingee and Irving A. Bachman some arrangement satisfactory to said bondholders, and each and all of them, and designed

to secure or repay them for all the moneys they had theretofore invested in the purchase of said bonds.

## XXII.

That, as this defendant is informed and believes, and upon such information and belief alleges the fact to be, thereupon said John L. Howard, as such stockholder and promoter of said Northwestern Portland Cement Company, and as such President and chief executive officer of said Western Building Material Company, controlling the sale and marketing of the entire output and production of said companies as hereinbefore alleged, and as such general agent, in the control of the income and sources of revenue of said companies, did demand of said William J. Dingee and said Irving A. Bachman that some arrangement satisfactory to said bondholders and designed to secure or repay them for the moneys which they had theretofore invested in said bonds so purchased by or through said John L. Howard, as aforesaid, should be made by said William J. Dingee and said Irving A. Bachman, by or through their control of the said companies and the boards of directors thereof.

## XXIII.

That, as this defendant is informed and believes, and upon such information and belief alleges the fact to be, thereupon said William J. Dingee and said Irving A. Bachman, as Presidents [46] and Vice-presidents, respectively, of said Northwestern Portland Cement Company and of this defendant, and in violation and disregard of their obligations and duties as such officers and directors, conspiring and

confederating with said John L. Howard, as the representative and agent of said bondholders and as a stockholder and promoter thereof, and in compliance with the demand of said John L. Howard so made as aforesaid, did undertake and agree that said William J. Dingee and said Irving A. Bachman would, by and with the consent and assistance of the said John L. Howard, cause this defendant, through their control of the Board of Directors thereof, to make and execute its several promissory notes, dated the first day of May, 1908, payable to said respective bondholders one year from their said date, wherein this said defendant should undertake and promise to pay to said bondholders the face value of said bonds so sold as aforesaid by and through said John L. Howard to said Evans, Coleman & Evans, said Charles D. Rand, said T. R. Stockett, Trustee, and said Thomas Graham; that said notes should be so executed as aforesaid upon the delivery to the said Northwestern Portland Cement Company by said bondholders of the bonds respectively held by them, and of the shares of stock theretofore issued as a bonus for the purchase thereof; and that upon the execution thereof said William J. Dingee and Irving A. Bachman should endorse the same and should thereupon be absolved by said bondholders and each of them, from any further or other liability.

#### XXIV.

That, as this defendant is informed and believes, and upon such information and belief alleges the fact to be, as a part of the same transaction, and as a further and additional inducement for the action



of said William J. Dingee and said Irving A. Bachman in so causing and procuring this defendant to execute said [47] notes, and each and all of them, said John L. Howard did agree to and did endorse to the order of said William J. Dingee and return and redeliver to him for the account of said William J. Dingee and said Irving A. Bachman certificates of the capital stock of said Northwestern Portland Cement Company representing 8,000 shares, more or less, which said Howard had received as hereinbefore alleged for his services and assistance in the promotion and incorporation of said Northwestern Portland Cement Company and the sale of said bonds.

#### XXV.

That thereupon said William J. Dingee and said Irving A. Bachman, for the purpose of carrying into effect said conspiracy and agreement so made as aforesaid with said John L. Howard, did cause a special meeting of the Board of Directors of this defendant to be held on the 5th day of May, 1908, at which meeting there appeared and attended said William J. Dingee, said Irving A. Bachman and said Edward McGary and no one else of the said members of said Board of Directors; that at said meeting so attended as aforesaid and during the absence from said meeting of the remaining members of said Board of Directors, and in furtherance of said conspiracy and agreement, said William J. Dingee introduced and moved the passage of a certain resolution, authorizing and directing said William J. Dingee or said Irving A. Bachman or said Edward McGary to purchase 100 bonds of said Northwest-



ern Portland Cement Company, together with the shares of stock of said Company theretofore issued to the holders of said bonds, for the sum of \$100,000, and did attempt thereby to authorize said William J. Dingee, said Irving A. Bachman and said Edward McGary to give the obligation or obligations of this defendant in payment therefor to the holders of said stocks and bonds, which said resolution and the motion for the adoption thereof were seconded by said Edward McGary and declared by said Irving A. Bachman to be carried [48] by the unanimous vote of said William J. Dingee, said Irving A. Bachman and said Edward McGary, a copy of the minutes of which said special meeting, together with said resolution, is hereunto annexed, hereby referred to, made a part hereof, and marked Exhibit "A."

## XXVI.

That, as this defendant is informed and believes, and upon such information and belief alleges the fact to be, said action of said Board of Directors in the adoption of said resolution as aforesaid was so taken at the special instance and request of said John L. Howard, and for the purpose of carrying into effect and making effective said conspiracy and said agreement so entered into as aforesaid by said John L. Howard as such representative and agent of said bondholders, and said William J. Dingee and said Irving A. Bachman; the passage and adoption of said resolution was so procured and caused to be done by said Howard, said Dingee and said Bachman, with the full understanding and knowledge that said bonds and said shares of stock of said Northwestern

Portland Cement Company, and each and all of them were greatly depreciated in value and of no market value, and not otherwise, and was and constituted a fraud on this defendant and upon the stockholders of this defendant.

### XXVII.

That, as this defendant is informed and believes, and upon such information and belief alleges the fact to be, thereafter, and on said 5th day of May, 1908, for the purpose of carrying into effect and making effective said conspiracy and said agreement, said Bachman and said Dingee and said Howard did procure and cause to be executed the promissory notes of this defendant in favor of said Evans, Coleman & Evans for the sum of \$30,000, in favor of said Charles D. Rand for the sum of \$5,000, in favor of said T. R. [49] Stockett, Trustee, for the sum of \$3,000, and in favor of said Thomas Graham for the sum of \$1,000, respectively, which said promissory notes are the same promissory notes referred to and set forth in plaintiff's complaint herein.

### XXVIII.

That said promissory notes and each and all of them were so executed and delivered by said William J. Dingee to said John L. Howard and delivered by said John L. Howard to said Evans, Coleman & Evans, said Charles D. Rand, said T. R. Stockett, Trustee, and said Thomas Graham, without the delivery by said Evans, Coleman & Evans or said Charles D. Rand, or said T. R. Stockett, Trustee, or said Thomas Graham, or by said John L. Howard, or either or any of them, to this defendant of any

of the bonds or stocks, as a consideration for the purchase of which, said notes and each and all of them were to be executed and delivered as aforesaid, but on the contrary, as this defendant is informed and believes, and therefore alleges the fact to be, said bonds and said stocks and each and all of them were in fact and in truth returned and redelivered by said John L. Howard and said William J. Dingee to the said Northwestern Portland Cement Company, and that said bonds and each and all of them were thereafter placed among, and considered as the assets of, said Northwestern Portland Cement Company, and said bonus stock and each and every share thereof was returned to the treasury of the said Northwestern Portland Cement Company; that this defendant did not, at the time of the execution and delivery of said notes as aforesaid, nor has it at any time since, nor has it at all, received any bonds or stock or any thereof.

## XXIX.

That, as this defendant is informed and believes, and upon such information and belief alleges the fact to be, said promissory notes in which said Evans, Coleman & Evans, Charles D. Rand, [50] T. R. Stockett, Trustee, and Thomas Graham are named as payees, and each and all of them, and said alleged claims against this defendant for the said purchase price of said bonds and stocks, were assigned to said plaintiff, if said promissory notes or said claims, or any or either of them, were assigned at all, which this defendant denies were so assigned, after maturity, and without consideration, and for the sole

and only purpose of enabling plaintiff to commence and prosecute this action.

WHEREFORE, this defendant prays to be hence dismissed with its costs of suit.

MORRISON, COPE & BROBECK,  
Attorneys for Defendant Standard Portland Cement  
Corporation, a Corporation.

State of California,  
City and County of San Francisco,—ss.

Frank H. Herbert, being first duly sworn, deposes and says: That he is an officer, to wit: Assistant Secretary of the Standard Portland Cement Corporation, one of the defendants named in the foregoing action; that he has read the foregoing answer and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters which are therein stated on information and belief, and as to those matters that he believes it to be true.

FRANK H. HERBERT.

Subscribed and sworn to before me, this 2d day of November, 1909.

[Seal] ADELINE COPELAND,  
Notary Public in and for the City and County of San  
Francisco, State of California. [51]

EXHIBIT "A."

Office of the

STANDARD PORTLAND CEMENT CORPORATION.

Crocker Building,  
San Francisco, Cal.

May 5, 1908.

A special meeting of the Directors of the Standard Portland Cement Corporation was held at the office of the Company, Rooms 311-316 Crocker Building, San Francisco, Cal., at the hour of 3 o'clock P. M., pursuant to the call of the President.

Proof was first made that notice had been given of this special meeting in accordance with the By-Laws.

The following Directors were present:

William J. Dingee,  
Irving A. Bachman,  
Edward McGary.

Absent:

F. W. Henshaw,  
Garret W. McEnerney.

President Irving A. Bachman presided.

On motion of Director Dingee, seconded by Director McGary, the following resolution was unanimously adopted:

Resolved, that the President or Vice-President or either of the Vice-Presidents of this Corporation be, and he is hereby authorized and directed on behalf of this Corporation to buy One hundred (100) bonds of the Northwestern Portland Cement Com-



pany for One Hundred Thousand Dollars (\$100,000), together with the shares of stock of said Company, which shares have heretofore been issued to the holders of said bonds, in the proportion of one (1) share of stock for each and every hundred dollars of the amount of said bonds. And he is further authorized to give the obligation or the obligations of this Corporation in payment therefor to each person, or persons, from whom such bonds and shares shall be bought, which obligations shall be executed by him under the name of this Corporation and attested by the Secretary under the corporate seal, and shall be made payable on or before one (1) year after May 1st, 1908, and shall bear interest at the rate of six per cent (6%) per annum from said date until paid; interest to be made payable semi-annually, and to be compounded if not so paid. He is further authorized, when such obligation or obligations shall become due, and if then unpaid, to renew the same from time to time until the amount due is paid in full.

There being no further business before the Board the meeting adjourned.

(Signed) L. F. YOUNG,  
Secretary.

Due service and receipt of a copy of the within Answer is hereby admitted this 3d day of November, 1909.

OLNEY, PRINGLE & MANNON,  
Attorneys for Plaintiffs.

[Endorsed]: Filed Nov'r 3, 1909. Southard Hoffman, Clerk. By W. B. Maling, Deputy Clerk. [52]



*In the Circuit Court of the United States, Ninth  
Circuit, in and for the Northern District of  
California.*

No. 14,887.

ERNEST E. EVANS, ——— COLEMAN, and  
PERCY W. EVANS, Partners Doing Busi-  
ness Under the Firm Name of EVANS.  
COLEMAN & EVANS,

Plaintiffs,

vs.

STANDARD PORTLAND CEMENT CORPORA-  
TION, a Corporation, WILLIAM J. DIN-  
GEE and IRVING A. BACHMAN,

Defendants.

**Answer of Defendants William J. Dingee and Irving  
A. Bachman.**

The defendants William J. Dingee and Irving A. Bachman, for answer to the complaint in the above-entitled action,—

Deny each and every allegation in said complaint contained.

WHEREFORE, said defendants pray to be hence dismissed with their costs herein incurred.

W. M. CANNON,  
Attorney for Defendants, William J. Dingee and  
Irving A. Bachman,

Receipt of a copy of the within Answer is hereby admitted this 8th day of November, 1909.

OLNEY, PRINGLE & MANNON,  
Attorneys for Plaintiffs.

[Endorsed]: Filed November 8, 1909. Southard Hoffman, Clerk. By J. A. Schaertzer, Deputy Clerk. [53]

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*In the Circuit Court of the United States, Ninth  
Judicial Circuit, Northern District of California.*

EVANS, COLEMAN and EVANS et al.,  
Plaintiffs,

vs.

STANDARD PORTLAND CEMENT CORPORATION et al.,  
Defendants.

**Stipulation Waiving Jury and Continuing Cause.**

It is hereby stipulated and agreed by and between the respective parties hereto that a trial by jury may be, and the same is hereby, waived, and that the trial of said cause may be, and the same is hereby, continued for the term.

WARREN OLNEY,  
OLNEY, PRINGLE & MANNON,  
Attorneys for Plaintiffs.  
MORRISON, COPE & BROBECK,  
Attorneys for Defendant.

[Endorsed]: Filed October 6, 1910. Southard Hoffman, Clerk. By W. B. Maling, Deputy Clerk. [54]

At a stated term, to wit, March term, A. D. 1911, of the District Court of the United States of America, in and for the Northern District of California, Second Division, held at the courtroom in the City and County of San Francisco, on Monday, the 3d day of April, in the year of our Lord one thousand nine hundred and eleven. Present: The Honorable WILLIAM C. VAN FLEET, District Judge.

No. 14,887.

ERNEST E. EVANS et al.

vs.

STANDARD PORTLAND CEMENT CORPORATION et al.

No. 15,249.

STANDARD PORTLAND CEMENT CORPORATION et al.

vs.

ERNEST E. EVANS et al.

**Order Referring Case to Referee.**

Upon motion of Warren Olney, Jr., and in accordance with stipulations filed and the signed order of the Court, it was ordered that the two above-entitled causes be referred to H. M. Wright, Master in Chancery of this Court, as Referee, to take the evidence herein and report the same to the Court, together with his findings of fact and conclusions of law, and that said reference, findings and conclusions

be advisory only and subject to confirmation, modification or rejection upon exceptions by any party.  
[55]

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**[Report of Standing Master in Chancery as  
Referee.]**

*In the Circuit Court of the United States, Ninth  
Judicial Circuit, Northern District of California.*

No. 14,887.

ERNEST E. EVANS, GEORGE COLEMAN and  
PERCY W. EVANS, Doing Business Under  
the Firm Name of EVANS, COLEMAN &  
EVANS,

Plaintiffs,

vs.

STANDARD PORTLAND CEMENT CORPORATION, a Corporation, WILLIAM J.  
DINGEE and IRVING A. BACHMAN,  
Defendants.

No. 15,249.

STANDARD PORTLAND CEMENT CORPORATION, a Corporation,

Complainant,

vs.

ERNEST E. EVANS, GEORGE COLEMAN and  
PERCY W. EVANS, Partners Doing Business Under the Firm Name of EVANS,  
COLEMAN & EVANS,

Respondents.

To the Honorable the Judges of the United States  
Circuit Court, Ninth Judicial Circuit, Northern  
District of California:

The report of H. M. Wright, Standing Master in  
Chancery of this court, respectfully shows as follows:  
[56]

The two above-entitled causes, number 14,887 being on the law side of the court and number 15,249 being on the equity side of the court, were referred to the undersigned, Standing Master in Chancery, by an order made and entered on April 3d, 1911, upon a stipulation of the parties directing the Master as a Referee to take and hear the evidence in said causes and report the same to the court, together with his findings of fact and conclusions of law. The title is of no consequence, but in pursuance of the order the Master may be said to have acted as Master in the equity cause and as Referee in the action at law. It was further stipulated that the report should be "advisory of the court only and of the same effect as a reference and report of a Referee in a suit in equity in said court"; that the report should be subject to confirmation "in accordance with Equity Rule 83 and the practice of the court in cases of reference in suits in equity." It was further stipulated that the two causes should be heard together and that the hearing of evidence should be subject to the rules of evidence governing a trial in actions at law tried by a court without a jury. This latter provision of the order was by stipulation of counsel in open court shown at pp. 262-6 of the transcript modified so that the rule with respect to the taking of

testimony should be the same as that in equity causes, implying in cases of an objection being sustained the possibility of the answer being, nevertheless, spread upon the record. The full text of said order of reference may be seen in a certified copy thereof annexed to this report in the appendix thereto, entitled Exhibit "A."

The parties attended upon the Master with their counsel, William I. Brobeck, Esq., and J. J. Dunne, Esq., appearing for the complainant and defendant Standard Portland Cement Corporation, and Warren Olney, Jr., Esq., and James Reid Pringle, Esq., appearing for the plaintiffs and respondents Evans, Coleman and Evans, and [57] the hearing was had on the following dates: May 22d, May 23d, May 24th, May 25th, May 26th, May 27th, May 29th, May 31st and June 1st, all in 1911, and on said last named day the testimony was closed. A date was thereupon set for argument and the cause from time to time continued at the request of counsel, argument being finally made in said matter by Mr. Dunne on September 13th and by Mr. Olney on September 14th, 1911. At the close of the argument on the last named date permission was given Mr. Dunne to file the written notes of his argument together with such reply to the oral argument of Mr. Olney as he might be advised, and the same was accordingly filed on September 22d thereafter. On October 19th, 1911, at the request of the Master, Mr. Olney filed a written brief on points which the Master deemed not fully covered by the oral argument.

The testimony in said cause and the oral argument



thereon was taken in shorthand and transcribed by Charles R. Gagan, a competent and disinterested reporter, and the said testimony in nine (9) volumes and the said oral argument in two (2) volumes, each identified by the signature of the Master on the cover thereof, is herewith separately returned and constitutes a true and correct transcript of the proceedings in said cause. The said subsequent written arguments of Mr. Dunne and Mr. Olney are also severally returned for the information of the court.

During the course of the hearing the depositions of Ernest E. Evans and John L. Howard, theretofore filed in each of said causes, were opened and in part read in evidence. During said hearing also a great number of letters and other documentary material was introduced in evidence as exhibits. In most cases an exhibit number or letter was given to said documentary evidence, and generally the same was copied at large in the record at the request of counsel. Exhibits so copied, or whose contents were sufficiently indicated in the record, were returned to the parties. [58] The following exhibits remain in my hands and are herewith separately returned: Cement Company's Exhibits 6, 7, 8, 9, 10, 11, 12, 13, 15, 16, 17 and 18. The said nine (9) volumes of testimony, together with the said exhibits, including such parts of said depositions as appear from said transcript of testimony to have been either incorporated in said transcript at length or by reference, constitutes all the evidence in said two causes.

The complaint in the action at law was filed May 22d, 1909, in behalf of Ernest E. Evans, George Cole-

man and Percy W. Evans as copartners under the firm name of Evans, Coleman & Evans, alien subjects of the King of Great Britain and Ireland residing in British Columbia, Dominion of Canada, against Standard Portland Cement Corporation, a California corporation, with its principal office in the City and County of San Francisco in said State, William J. Dingee and Irving A. Bachman, then residents and citizens of the State of California and Northern District thereof. It counts on promissory note by the defendant to the plaintiffs for Thirty Thousand Dollars (\$30,000), due May 1st, 1909, and in other counts on other notes assigned to the plaintiffs for various sums due at the same time and made by the same corporation, concluding with a prayer for judgment in the sum of Forty Thousand Dollars (\$40,000.00), with interest according to the terms of the notes. The verified answer of the Standard Portland Cement Corporation was filed November 3d, 1909. An unverified answer denying the allegations of the complaint generally was filed on November 8th, 1909, by William M. Cannon, Esq., as attorney for the defendants Dingee and Bachman. The answer of the Cement Corporation set up certain equitable defenses, and their counsel being later advised that equitable defenses must be set up by a separate bill on the equity side of the court (*Burnes vs. Scott*, 117 U. S. 582; *Levi vs. Mathews*, 145 Fed. 152), the corporation filed its bill in equity, being suit number 15,249, on [59] November 14th, 1910, setting forth specifically further and other matters of equitable cognizance as a defense to the notes, and praying an

injunction of the court against the further prosecution of the action at law. To the bill in equity an answer was filed by Evans, Coleman & Evans on March 6th, 1911, denying the equity of the bill in all particulars. On June 29th, 1911, after the trial before the Master was concluded a stipulation was filed signed by counsel for Evans, Coleman & Evans and counsel for Standard Portland Cement Corporation, dated June 13th, 1911, providing that the bill in equity filed by the corporation should be amended in certain particulars therein named and the allegations thereof be deemed denied by the respondents, the purpose of which amendment, speaking generally, was to plead that the notes were ultra vires and contrary to public policy and therefore void.

The foregoing introductory matter has been made in duplicate and appears as the introductory part of the report in each of the two causes above entitled, it being the understanding of the Master that report should be filed in each cause. However, the before-mentioned Exhibit "A," the volumes of testimony, are arguments and briefs, and the exhibits, all of which are returned, will be filed by me in the cause in equity, namely, number 15,249. I also separately file in the last-mentioned cause in equity an opinion originally prepared as a part of the report, but omitted and separately filed for the sake of brevity. In this will be found the full discussion of my reasons for the findings made in the cause at law and the suit in equity above entitled. The solicitors for the respondents have, at my request, prepared findings pursuant to said opinion, which have been made known

to the solicitors for the complainants, and which, after some revision by me, I hereby adopt as my findings of fact and conclusions of law, as follows: [60]

**[Findings and Conclusion of Master-Referee.]**

*In the Circuit Court of the United States, Ninth  
Judicial Circuit, Northern District of California.*

AT LAW—No. 14,887.

ERNEST E. EVANS, GEORGE COLEMAN, and  
PERCY W. EVANS, Partners, Doing Business Under the Firm Name of EVANS,  
COLEMAN & EVANS,

Plaintiffs,

vs.

STANDARD PORTLAND CEMENT CORPORATION, A Corporation, WILLIAM J. DINGEE and IRVING A. BACHMAN,

Defendants.

The above-entitled cause having come on regularly to be heard before H. M. Wright, Master in Chancery, as referee, to take and hear the evidence therein and report the same to the Court, together with his findings of fact and conclusions of law, in accordance with the stipulation of the parties, plaintiffs appearing by their attorneys, Warren Olney, Jr., and James Reid Pringle, and the defendant, Standard Portland Cement Corporation, appearing by its attorneys William I. Brobeck and J. J. Dunne, and the defendants William J. Dingee and Irving A. Bachman not appearing, after due notice of the hearing given them, and oral and documentary evidence having

been introduced, and the cause submitted for decision, the referee being fully advised in the premises, now makes his findings of fact and conclusions of law as follows: [61]

Said Referee finds:

I.

That the plaintiffs Charles D. Rand, T. R. Stockett, and Thomas Graham, hereinafter mentioned were, at the time of the commencement of this action and at all the times mentioned in the complaint, aliens and residents of British Columbia, and citizens of the Dominion of Canada and of the Kingdom of Great Britain, and subjects of King Edward VII, then king of Great Britain and Ireland; that the plaintiffs are, and were at the time of the commencement of this action, and at all times mentioned in said complaint, partners, doing business under the firm name of Evans, Coleman and Evans.

That the defendant Standard Portland Cement Corporation is, and at all the times herein mentioned was, a corporation organized and existing under the laws of the State of California, with its principal office in the City and County of San Francisco, in said State, and a citizen of the State of California, and a resident of the Northern District thereof.

That the defendants William J. Dingee and Irving A. Bachman were, at the time of the commencement of this action, and at all times hereinafter mentioned, citizens and residents of the State of California and of the Northern District thereof.

II.

That on the fifth day of May, 1908, the defendant



Standard Portland Cement Corporation made, executed and delivered to the plaintiffs its promissory note the words and figures following, to wit: [62]

“San Francisco, May 1, 1908.

For value received, the Standard Portland Cement Corporation promises to pay to the order of Evans, Coleman and Evans, on or before one year from and after May 1, 1908, the sum of thirty thousand (\$30,000) dollars, with interest thereon from said day until paid, at the rate of 6 per cent per annum, payable semi-annually, and if not so paid, to be compounded.

STANDARD PORTLAND CEMENT CORPORATION.

By WILLIAM J. DINGEE,  
Vice-Pres'dt.

By L. F. YOUNG,  
Secretary.”

[Seal of Standard Portland Cement Corporation.]

That, at the same time, and as a part of the same transaction, the defendants, William J. Dingee and Irving A. Bachman, endorsed said promissory note, and also waived presentment, demand, protest and notice of nonpayment of said note; that said endorsements and waiver were made before said note was delivered to the plaintiffs; that no part of said promissory note, either principal or interest, has been paid; that the plaintiffs are, and always have been, the owners and holders of said promissory note.

### III.

That on the fifth day of May, 1908, the defendant, Standard Portland Cement Corporation, made, ex-



ecuted and delivered to said Charles D. Rand its promissory note in the words and figures following, to wit:

“San Francisco, May 1, 1908.

For value received, the Standard Portland Cement Corporation promises to pay to the order of Charles D. Rand, on or before one year from and after May 1, 1908, the sum of five thousand (\$5,000) dollars, with interest thereon from said date until paid, at the rate of 6 per cent per annum, payable semi-annually, and if not so paid, to be compounded.

STANDARD PORTLAND CEMENT CORPORATION,

By WILLIAM J. DINGEE,

Vice-Pres'dt.

By L. F. YOUNG,

Secretary.”

[Seal of Standard Portland Cement Corporation.]

[63]

That, at the same time, and as a part of the same transaction, the defendants William J. Dingee and Irving A. Bachman endorsed said promissory note, and also waived presentment, demand, protest and notice of nonpayment of said note; that said endorsements and waiver were made before said note was delivered to said Charles D. Rand; that no part of said promissory note, either principal or interest, has been paid; that said Charles D. Rand, prior to the commencement of this action, assigned and endorsed said promissory note to the plaintiffs, and the plaintiffs have ever since been the owners and holders thereof.

IV.

That on the fifth day of May, 1908, the defendant Standard Portland Cement Corporation made, executed and delivered to said T. R. Stockett its promissory note in the words and figures following, to wit:

“San Francisco, May 1, 1908.

For value received, the Standard Portland Cement Corporation promises to pay to the order of T. R. Stockett, Trustee, on or before one year from and after May 1, 1908, the sum of three thousand (\$3,000) dollars, with interest thereon from said date until paid, at the rate of 6 per cent per annum, payable semi-annually, and if not so paid, to be compounded.

STANDARD PORTLAND CEMENT CORPORATION,

By WILLIAM J. DINGEE,  
Vice-Pres'dt.

By L. F. YOUNG,  
Secretary.”

[Seal of Standard Portland Cement Corporation.]

That, at the same time, and as a part of the same transaction, the defendants William J. Dingee and Irving A. Bachman endorsed said promissory note and also waived presentment, demand, protest and notice of nonpayment of said note; that said endorsements and waiver were made before said note was delivered to said [64] T. R. Stockett; that no part of said promissory note, either principal or interest, has been paid; that said T. R. Stockett, as Trustee, assigned and endorsed said promissory note to the plaintiffs before the commencement of this action,

and the plaintiffs have ever since been the owners and holders thereof.

## V.

That, on the fifth day of May, 1908, the defendant Standard Portland Cement Corporation made, executed and delivered to said Thomas Graham its promissory note in the words and figures following, to wit:

“San Francisco, May 1, 1908.

For value received, the Standard Portland Cement Corporation promises to pay to the order of Thomas Graham, on or before one year from and after May 1, 1908, the sum of one thousand (\$1,000) dollars, with interest thereon from said date until paid, at the rate of 6 per cent per annum, payable semi-annually, and if not so paid, to be compounded.

STANDARD PORTLAND CEMENT CORPORATION,

By WILLIAM J. DINGEE,

Vice-Pres'dt.

By L. F. YOUNG,

Secretary.”

[Seal of Standard Portland Cement Corporation.]

That, at the same time and as a part of the same transaction, the defendants William J. Dingee and Irving A. Bachman endorsed said promissory note, and also waived presentment, demand, protest and notice of nonpayment of said note; that said endorsements and waiver were made before said note was delivered to said Thomas Graham; that no part of said promissory note, either principal or interest, has been paid; that said Thomas Graham, before the commencement of this action, assigned and endorsed

said promissory note to the plaintiffs, and the plaintiffs have ever since been the owners and holders thereof. [65]

## VI.

That each of the above-mentioned promissory notes was executed and delivered for a valuable consideration paid and delivered by the respective payees of said notes to said Standard Portland Cement Corporation on May 5th, 1908, that is to say on said date the plaintiffs herein delivered to said defendant Standard Portland Cement Corporation thirty bonds and three hundred shares of the stock of the Northwestern Portland Cement Company, a corporation, and thereupon and at the same time, and in consideration therefor, there was delivered to the plaintiffs the promissory note of said defendant in favor of the plaintiffs hereinbefore set forth; that at the same time said Charles D. Rand delivered to said Standard Portland Cement Corporation five bonds and fifty shares of the stock of said Northwestern Portland Cement Company, and thereupon and at the same time, and in consideration therefor, said defendant delivered to said Charles D. Rand its promissory note in his favor hereinbefore set forth; that at the same time said T. R. Stockett delivered to said Standard Portland Cement Corporation three bonds and thirty shares of the stock of said Northwestern Portland Cement Company, and thereupon and at the same time, and in consideration therefor, said defendant delivered to him the said promissory note in his favor as trustee hereinbefore set forth; that at the same time said Thomas Graham delivered to said Standard Portland Cement Corporation one

bond and ten shares of the stock of said Northwestern Portland Cement Company, and thereupon and at the same time, and in consideration therefor, said defendant delivered to said Thomas Graham its promissory note in his favor hereinbefore specified;

VII.

I intentionally omit to find on other issues presented by the answer herein, for the reason that they present defenses of [66] fraud and other matters of purely equitable cognizance which were not properly pleadable in an answer at law, and which this court has not the power to consider on its law side. The same issues have, however, been presented by the bill in equity filed in said court entitled *Standard Portland Cement Corporation vs. Ernest E. Evans, George Coleman and Percy W. Evans*, partners doing business under the firm name of Evans, Coleman & Evans, number 15,249, on the equity side of said court, a case tried at the same time with this action, and the said issues have been by my findings in said cause determined adversely to the complainants therein, being the defendants herein.

From the foregoing facts the Referee finds, as his conclusions of law, that the plaintiffs are entitled to the judgment against the defendants, and each and all of them, for the sum of Thirty-nine Thousand Dollars (\$39,000.00), together with interest at the rate of six per cent (6%) per annum, from the first day of May, 1908, compounded semi-annually, and for costs.

Dated this 22d day of December, 1911.

H. M. WRIGHT,  
Master in Chancery (As Referee).



**Supplementary Report [of Master-Referee].**

The proceedings taken on settlement of the Master's report have to some extent been indicated at page 51½ of the foregoing report.

On November 1, 1911, the attorneys for the respective parties were advised that my report was in draft in the shape of an opinion and counsel for Evans, Coleman & Evans were invited to [67] prepare special findings and opposing counsel to file objections to suggested findings. Copy of the letter of notification is annexed hereto. Suggested findings and objections thereto were accordingly filed. The objections to the findings were in substance the same as findings 4, 5 and 6, in the objections to the report, herewith separately filed, and said objections to the suggested findings do not seem to me material to be filed herewith. The said suggested findings offered by counsel for Evans, Coleman & Evans, after revision, were adopted by me as my draft report herein, and on December 2d, 1911, counsel for the respective parties were notified of my action thereon by mail, and were given until December 18, 1911, within which to prepare, serve and file with me their objections to the report as finally drafted. Copy of said letter is hereunto annexed. The time thus limited was extended to December 20, 1911, and on said last-mentioned day counsel for the Standard Portland Cement Corporation served and filed with me objections to the said report, which objections, by reason of their bulk, are not hereunto annexed, but are herewith separately returned at the same time with his



report. Having duly considered each of the said objections I have this day overruled said objections, and have settled and signed the foregoing as my final report herein.

Respectfully submitted with my final report this 22d day of December, 1911.

H. M. WRIGHT,  
Master in Chancery, as Referee. [68]

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**[Notice of Preparation of Draft Report of Master-Referee.]**

*United States Circuit Court, Ninth District, Northern District of California.*

Office of the  
Master in Chancery,  
214-215 United States Courthouse and  
Post Office Building.

San Francisco, Cal., November 1st, 1911.

To Morrison, Dunne & Brobeck and to J. J. Dunne, Esq., Solicitors for Standard Portland Cement Corporation, and to Warren Olney, Jr., Esq., and James Reid Pringle, Esq., Solicitors for Evans, Coleman & Evans:

Please be advised that the report of the undersigned as Master and Referee in cases numbers 14,887 and 15,249, in the above-entitled court is in draft and may be inspected in the Master's Office. Copies if desired can be arranged for with the Master's reporter, Mr. Eckhoff. The report is in favor of the respondents in the equity action and plaintiffs in the law action.

The draft, after reciting the history of the proceedings before me, is in the shape of an opinion. Rule 52 of the rules of this court requires in my opinion that the report shall consist of specific findings. The report is therefore incomplete and, following the usual practice, the assistance of prevailing counsel will now be asked. Counsel for Evans, Coleman & Evans will, therefore, prepare, serve and file findings of fact and conclusions of law in each cause, in consonance with the opinions expressed in the draft. In addition thereto suggestions may be made of obvious errors or other necessary corrections or modifications, including matters omitted which should be stated, consistent with the views expressed. These findings and suggested modifications should be served upon opposing counsel and filed with me on or before November 9th, 1911, and opposing counsel may have until November 15th, 1911, to serve and file their objections to such suggestions. These objections should not be inconsistent with the opinions expressed by me. The report will then be settled as a draft and the counsel for the losing party will be given time thereafter in which to file their objections to the report.

Yours truly,

H. M. WRIGHT,  
Master-Referee. [69]

**[Notice of Settlement of Report of Master-  
Referee.]**

*United States Circuit Court, Ninth District, Northern District of California.*

Office of the Master in Chancery, 214-215 United States Courthouse and Post Office Building.

San Francisco, Cal., December 2, 1911.

To Warren Olney, Jr., Esq., and James Reid Pringle, Esq., Solicitors for Plaintiffs and Respondents Evans, Coleman & Evans, and to W. I. Brobeck, Esq., and J. J. Dunne, Esq., Solicitors for Standard Portland Cement Corporation, Complainant and Defendant:

In the matter of settlement of proposed reports in Evans et al. vs. Standard Portland Cement Corporation and the contra cause, numbers 14,887 and 15,249, I have considered the proposed findings in each cause submitted by counsel for Evans, Coleman & Evans, and the proposed amendments thereto submitted by opposing counsel, and have this day settled the said reports as my considered draft reports herein as follows:

The following amendments in each case by attorneys for Standard Portland Cement Corporation have been overruled:

The draft report heretofore prepared by me will be, in the first place, modified so that a report will be filed both in the law cause and in the cause in equity. In each report the first five pages of the draft already prepared by me, containing introductory matter, will

open the report. Then insert a new page, copy of which is herewith enclosed for your guidance, to be numbered 51½. The opinion beginning with page 6 to the end of the draft report hitherto prepared will be omitted and will be filed separately in the cause in equity as an opinion explanatory of the report. Then insert the proposed findings hitherto presented by counsel for Evans, Coleman & Evans, which I have adopted except as follows:

1st. Omit paragraph XV, at pages 24 and following, and insert in place thereof as Paragraph XV the amendments thereof prepared by Olney, and, according to my information, mailed to opposing counsel. The same can be seen if desired at my office.

2d. In finding XVII, at page 27, third line, insert after the word "aware" the words "until November, 1908."

3d. In finding XX, page 29, fifth line from bottom, change the word "under" to "in," and on page 30, same finding, line 10, after the word "thereupon" insert the words "in March, 1908" and on page 31, same finding, second line from bottom, after the word "complainant" insert the words "save as hereinafter set forth."

4th. At page 38 before the conclusions of law insert a new finding, to be numbered Finding XXX, copy of which is herewith enclosed. [70]

To W. O. Jr. & J. R. P.

W. I. B. & J. J. D.

In the report in the action at law, number 14,887, after page 51½ of my draft before-mentioned, the opinion will be omitted and returned separately as

stated, to be filed in the equity cause, and will then continue with the findings proposed by Mr. Olney, which have been adopted except as follows:

I have rejected proposed findings number VI to and including XXX, and have inserted in place thereof new findings to be numbered VI and VII, after finding V, and before the suggested conclusions of law, a copy of which is enclosed with this letter.

Against the possibility that I may not have made myself entirely clear as regards the present form of the draft reports, the parties are at liberty to inspect the same in my office at any time.

The parties may have until and including December 18th, 1911, within which to prepare, serve and file with me their objections to the reports in each of the above-entitled matters, which should be so framed as to serve as the foundation for exceptions to be filed to the report in the court above after the same report is finally settled, signed and filed.

Yours truly,

H. M. WRIGHT,  
Master-Referee.

[Endorsed]: Filed Dec. 22, 1911. Southard Hoffman, Clerk. By W. B. Maling, Deputy Clerk. [71]

*In the Circuit Court of the United States, Ninth  
Judicial Circuit, Northern District of California.*

AT LAW—No. 14,887.

ERNEST B. EVANS, GEORGE COLEMAN, and  
PERCY W. EVANS, Partners, Doing Busi-  
ness Under the Firm Name of EVANS,  
COLEMAN & EVANS,

Plaintiffs,

vs.

STANDARD PORTLAND CEMENT CORPORA-  
TION, a Corporation, WILLIAM J. DIN-  
GEE and IRVING A. BACHMAN,

Defendants.

**Objections to Referee's Report and Findings.**

Objections taken by Standard Portland Cement Corporation, a corporation, defendant herein, to the Report and Findings made in the above-entitled cause by Hon. H. M. Wright, Referee.

FIRST.—For that at and during the hearing upon which said report and findings were made, and in the taking of the testimony upon which said report and findings were and are based, the said Referee hath committed errors in law, prejudicial to said defendant, and at said hearing duly excepted to by said defendant; and in this behalf, this defendant specifies said errors as follows, to wit:

1. Said Referee erred in overruling the objection of the said defendant to the following question asked the witness Ernest E. Evans on cross-examination in his deposition now on file in the above-entitled action,—



“Mr. Evans at the time of the sale of the bonds and stocks of the Northwestern Portland Cement Co. to the Standard Portland Cement Corporation, had you considered in your own mind the value of the assets [72] of the Northwestern Portland Cement Company?”

Said objection was made upon the ground that said question and the evidence sought to be elicited thereby were incompetent, immaterial and irrelevant, and not pertinent to any issue in the case and assuming a fact as to which there was no evidence, to wit, that there was any sale to the Standard Portland Cement Corporation, and calling for the secret, uncommunicated mental processes of the

**Overruled.** witness; said objection was overruled by said Referee, to which ruling said defendant then and there duly excepted and now assigns the same as error.

2. Said Referee erred in receiving, and in denying the motion of said defendant to strike out, all of the testimony given by the witness Ernest E. Evans in his deposition now on file in the above-entitled action, relative to the values, and particularly to the value of any estate or assets of the Northwestern Portland Cement Company; said motion was made upon the ground that said testimony of said witness was incompetent, immaterial and irrelevant, without foundation,—

It not appearing that the witness knew either the intrinsic value of the alleged assets or the market value thereof, and upon the ground that the answer as given was not responsive to the question asked.

Said motion was denied by said Referee, to which ruling said defendant then and there  
**Overruled.** duly excepted and now assigns the same as error.

3. Said Referee erred in overruling the objection of said defendant to the following question asked the witness Ernest E. Evans on cross-examination in his deposition now on file in the [73] above-entitled action,—

“What figure, if any, did you put upon those assets?”

Said objection was made upon the ground that said question and the evidence sought to be elicited thereby were incompetent, immaterial and irrelevant, and not pertinent to any issue in the case and assuming a fact as to which there was no evidence, to wit, that there was any sale to the Standard Portland Cement Corporation, and calling for the secret, uncommunicated mental processes of the witness, and upon the further ground that his mental condition, or mental processes, beliefs, or private opinions, uncommunicated, are immaterial to any issue in this case, and do not constitute any fact or facts by which said defendant could or should be bound; said objection was overruled by said Referee, to which ruling said defendant then and there duly excepted and now assigns the same as error.

4. Said Referee erred in receiving, and in denying the motion of said defendant to strike out, the following answer given by the witness Ernest H. Evans on his cross-examination in his deposition now on file in the above-entitled action,—

“Well, I considered that they were worth between \$240,000 and \$250,000, that is, if the company were liquidated.”

Said motion was made upon all the grounds stated in the objection mentioned in the last preceding paragraph herein, and upon the further  
**Overruled.** ground that said answer was purely speculative: said motion was denied by said Referee, to which ruling said defendant then and there duly excepted and now assigns the same as error.

5. Said Referee erred in receiving, and in denying the motion of said defendant to strike out, the following answer given by the witness Ernest E. Evans on cross-examination in his deposition [74] now on file in the above-entitled action, in response to the question,—

“By ‘liquidated’ you mean?” namely, “That is to say, if the company went into liquidation, and the assets was sold, they would realize between \$240,000 and \$250,000, but as a going concern I considered that it was worth par easily, because the money which was actually spent in construction would have to be spent anyhow.”

Said motion was made upon all the grounds enumerated in paragraph 3 hereof, and upon the further ground that said answer is not responsive to the question asked, and upon the further ground that the witness was merely speculating as to  
**Overruled.** possibilities, and not stating a fact, but making an argument; said motion was denied by said Referee, to which ruling said defend-

ant duly excepted and now assigns the same as error.

6. Said Referee erred in receiving, and in denying the motion of said defendant to strike out, the following passage from the testimony given by the witness Ernest E. Evans on cross-examination in his deposition now on file in the above-entitled action,—

“Q. Considering the concern as a going concern, or as a concern the owners of which contemplated going ahead with it, would you have put a different figure upon the assets? A. Certainly, the going ahead with it; I would consider it fully worth par.”

Said motion was made upon all the grounds heretofore stated in paragraph 3 hereof and in the last preceding paragraph hereof; said motion

**Overruled.** was denied by said Referee, to which ruling said defendant duly excepted and now assigns the same as error.

7. Said Referee erred in receiving, and in denying the [75] motion of said defendant to strike out, the following passage from the testimony given by the witness Ernest E. Evans on cross-examination in his deposition now on file in the above-entitled action,—

“Q. At the time referred to of the sale of your stocks and bonds to the Standard Portland Cement Corporation, did you have any information as to the plans of Mr. Dingee or Mr. Bachman for going ahead, or not going ahead with the Northwestern Cement Company? A. Yes; I distinctly understood all along that they were going ahead with this, only they had stopped it

owing to the financial panic until things settled down again, and at the time that I met Dr. Bachman when he went to examine the property, of course we spent the evening together, and he distinctly stated this Northwestern Portland Cement Company was to be eventually amalgamated with the Santa Cruz and the Standard Portland Cement Corporation."

Said motion was made upon the ground heretofore enumerated in the previous paragraphs herein, and upon the further grounds that the above-mentioned answer was incompetent, immaterial and irrelevant, not responsive, involving hearsay, *ex parte* declarations of persons by whose statements the above-named defendant could not be bound or should not be bound, and not properly cross-examination. Said motion was denied by said Referee, to which ruling said defendant then and there duly excepted, and now assigns the same as error.

8. Said Referee erred in receiving, and in denying the motion of said defendant to strike out, the following passage from the testimony given by the witness Ernest E. Evans on cross-examination in his deposition now on file in the above-entitled action,—

"What interest, if any, did you understand the Standard Portland Cement Company had in the Northwestern Cement Company? A. Well, the idea of starting the Northwestern Company was strategic, and with the idea of protecting the [76] other factories."



Said motion was made upon all the grounds heretofore stated in the last preceding paragraph hereof; said motion was denied by said Referee, to which ruling said defendant then and there duly excepted, and now assigns the same as error.

9. Said Referee erred in receiving, and in denying the motion of said defendant to strike out, a portion of the following passage from the testimony given by the witness John L. Howard on cross-examination upon the hearing in the above-entitled action,—

“Q. At the time of the purchase of the bonds of the Northwestern Portland Cement Company by the Standard Portland Cement Corporation was anything said by Mr. Dingee as to the Standard Portland Cement Corporation relative to the Northwestern? A. I don't recall that he said anything at that time, but both he and Bachman had frequently spoken of it before.”

Said motion was made upon the ground that the latter half of the foregoing answer was **Overruled.** not responsive to the question asked; said motion was denied by said Referee, to which ruling said defendant then and there excepted, and now assigns the same as error.

10. Said Referee erred in overruling the objection of said defendant to the following question asked the witness John L. Howard on cross-examination upon the hearing of the above-entitled action,—



“Q. I call your attention to defendants’ ‘Exhibit 2,’ and to the letter therein by the Standard Portland Cement Corporation to the Western Fuel Company, dated March 8, 1906, and to the assignment therein dated June 30, 1906, by the Western Fuel Company to the Western Building Material Company of the sales contract between the Western Fuel Company and the Standard Portland Cement Company, and to the consent therein of such [77] assignment by the Standard Portland Cement Company, and ask you what is the explanation of the provision in the letter and assignment to the effect that the sales contract may at any time be terminated at the option of the Standard Portland Cement Company in case you yourself should cease at any time to be the general executive officer of the Western Fuel Company or the Western Building Material Company?”

Said objection was made upon the ground that said question and the testimony sought to be elicited thereby were immaterial, irrelevant and incompetent, not proper cross-examination, without foundation in this, that it does not appear that the witness knows, and an attempt to vary the terms of a written instrument of parole evidence; said ob-

**Overruled.** jection was overruled by said Referee, to which ruling said defendant then and there duly excepted and now assigns the same as error.

11. Said Referee erred in sustaining the objection of the above-named plaintiffs to the following

question asked the witness John L. Howard upon the hearing of the above-entitled matter,—

“Q. Now, it appeared then at that time that you were in doubt whether you learned of that at the time of the Wenzelberger report or whether you learned of it later?”

Said objection was made upon the ground that said question assumes something that is

**Overruled.** not in the case; said objection was sustained by said Referee, to which ruling said defendant then and there duly excepted and now assigns the same as error.

12. Said Referee erred in overruling the objection of said defendant to the following question asked the witness Foster Young upon the hearing in the above-entitled action,—

“Q. But you understood, anyhow, did you not that he came [78] there in accordance with the letter of May 4, 1908?”

Said objection was made upon the ground that said question and the testimony sought to be elicited thereby were incompetent and not proper cross-examination, and upon the further ground that the understanding of the witness is not evi-

**Overruled.** dence; said objection was overruled by said Referee, to which ruling said defendant then and there duly excepted and now assigns the same as error.

13. Said Referee erred in granting the motion of the above-named plaintiffs to strike out from the

**Overruled.** record in the above-entitled action the minute-book of the Northwestern Port-

land Cement Company, to which ruling said defendant then and there duly excepted and now assigns the same as error.

14. Said Referee erred in sustaining the objections of the above-named plaintiffs to the introduction in evidence upon the hearing of the above-entitled action of the book containing the bond account and record of subscriptions and sales of bonds of the Northwestern Portland Cement Company; said objection was made upon the ground that said book was incompetent, immaterial, hearsay, and not the best evidence; said objection was **Overruled.** sustained by said Referee, to which ruling said defendant then and there duly excepted, and now assigns the same as error.

15. Said Referee erred in sustaining the objection of the above-named plaintiffs to the receiving in evidence upon the hearing of the above-entitled action of the memorandum slip in the handwriting of William J. Dingee showing subscription for bonds of the Northwestern Portland Cement Company; said objection was made upon the ground that said memorandum slip was incompetent, hearsay and not binding upon any of the parties to this action, and not within [79] the knowledge of the witness; said objection was sustained by said Referee, **Overruled.** to which ruling said defendant then and there duly excepted and now assigns the same as error.

16. Said Referee erred in sustaining the objection of the above-named plaintiffs to the following question asked the witness Foster Young during the

hearing of the above-entitled action,—

“Q. Has there ever been any question in your mind as to whether you held those bonds to the order of the Standard Portland Cement Corporation?”

Said objection was made upon the ground that said question was incompetent and immaterial and calling for the opinion and view of the witness; said objection was sustained by said Referee,  
**Overruled.** to which ruling said defendant then and there duly excepted and now assigns the same as error.

17. Said Referee erred in sustaining the objection of the above-named plaintiffs to the following question asked the witness Foster Young during the hearing of the above-entitled action,—

“Q. Have you ever regarded the Standard Portland Cement Corporation as in any manner the owner of those bonds?”

Said objection was made upon the ground that said question was incompetent and immaterial and calling for the opinion and view of the witness; said objection was sustained by said Referee,  
**Overruled.** to which ruling said defendant then and there duly excepted and now assigns the same as error.

18. Said Referee erred in overruling the objection of said defendant to the following question asked the witness John L. Howard upon the hearing of the above-entitled action,—

“Mr. Howard, will you state to the Court what evidences of lime deposits there were on

this ground in Washington which was finally acquired by the Northwestern Portland Cement Company?" [80]

Said objection was made upon the ground that said question and the testimony sought to be elicited thereby were immaterial, irrelevant and incompetent, and without foundation in this that it was not shown that the witness is competent, and upon the further ground that it was not a proper subject matter in any event for statement by the witness—he not having been shown to have been experienced in the line to which the inquiry was addressed, and upon the further ground that the witness was a general merchant and neither a geologist nor an expert upon these matters, and upon the further ground that it already appeared that the witness had not

been actually on the spot; said objection was overruled by said Referee, to which ruling said defendant then and there duly excepted, and now assigns the same as error.

19. Said Referee erred in overruling the objection of said defendant to the following question asked the witness John L. Howard during the hearing of the above-entitled action,—

“Q. What was its extent?”

Said objection was made upon the ground that no foundation had been laid, in this, that it did not appear that the witness knew; said objection was overruled by said Referee, to which ruling the said defendant then and there duly excepted, and now assigns the same as error; and in this behalf this



defendant further assigns as error the ruling of said Referee admitting general state-  
**Overruled.** ments by said witness John L. Howard as to the extent and size of the above-mentioned lime deposits.

20. Said Referee erred in overruling the objection of said defendant to the following question asked the witness John L. Howard during the hearing of the above-entitled action,—

“Q. Did this acceptance or any other acceptance by the Western Fuel Company in favor of either the Standard Portland Cement Corporation or the Santa Cruz Portland [81] Cement Company have anything to do or play any part in connection with the sale of the bonds of the Northwestern Portland Cement Company involved in this transaction?”

Said objection was made upon the ground that said question and the testimony sought to be elicited thereby were immaterial, irrelevant and incompetent, and calling for the opinion and private judgment of the witness, and upon the further ground that the witness had already testified that he had no recollection as to anything else affecting these acceptances except what appeared on the paper itself;  
said objection was overruled by said  
**Overruled.** Referee, to which ruling said defendant then and there duly excepted and now assigns the same as error.

21. Said Referee erred in overruling the objection of said defendant to the following question asked the witness John L. Howard during the hear-



ing of the above-entitled action,—

“Q. What knowledge or information did you have as to any intention on the part of Mr. Dingee that the bonds and stocks of the Northwestern Portland Cement Company purchased by the Standard Portland Cement Corporation were not to be held by the latter Company, but were to be turned over to the Northwestern Company?”

Said objection was made upon the ground that the question asked and the testimony sought to be elicited thereby were incompetent, being an effort to establish the intention of one person by the statement of another person; said objection

**Overruled.** was overruled by said Referee, to which ruling said defendant then and there duly excepted and now assigns the same as error.

22. Said Referee erred in receiving, and in denying the motion of said defendant to strike out, the following passage from the testimony given by the witness John L. Howard during the hearing [82] of the above-entitled action,—

“Q. What knowledge or information did you have as to the actual disposition of the bonds and stock of the Northwestern that was sold to the Standard Portland Cement Corporation?

A. The only knowledge I had was the fact of their delivery by Mr. Norcross to Mr. Young. Beyond that I knew nothing.”

Said motion to strike out was made upon the ground that the question asked and answer calls for and states the conclusion of the witness, on the fur-

ther ground that it does not appear that the witness had any real or personal knowledge upon the subject, and upon the further ground that he testified from hearsay only; said motion was denied by **Overruled.** said Referee, to which ruling said defendant then and there duly excepted and now assigns the same as error.

23. Said Referee erred in overruling the objection of said defendant to the following question asked the witness Sidney V. Smith upon his direct examination during the hearing of the above-entitled action,—

“Q. What took place at that interview as you remember it?”

Said objection was made upon the ground that said question and the testimony sought to be elicited thereby were immaterial, irrelevant and incompetent, and calling for hearsay, and upon the further ground that it did not appear that the party or parties sought to be charged with what took place at said interview, or any representative of them was present thereat, and upon the further ground that as against the Northwestern Portland Cement Company, and particularly as against the Standard Portland Cement Corporation the proffered evidence was *res inter alios acta*, and self-serving; said objection was overruled by said Referee, to which **Overruled.** said [83] defendant then and there duly excepted and now assigns the same as error.

24. Said Referee erred in overruling the objection of said defendant to the following question

asked the witness Ernest E. Evans during the hearing of the above-entitled action,—

“Q. Mr. Evans, state whether or not at the first interview which you and Mr. Spencer and Mr. Smith had with Mr. Howard in March, 1908, any proposal or suggestion was made to you and the other gentlemen with you, by Mr. Howard, as to any plan for relieving you of your investments in the Northwestern Portland Cement Company?”

Said objection was made upon the ground that said question was leading and suggestive; said objection was overruled by said Referee,  
**Overruled.** to which ruling said defendant then and there duly excepted and now assigns the same as error.

SECOND.—For that the said Referee in his said report and findings, in the finding numbered “VI” hath found that each of the promissory notes in said report and findings mentioned was executed and delivered for a valuable consideration paid and delivered by the respective payees of said notes to this defendant on May 5, 1908, that is to say, on said date the above-named plaintiffs delivered to this defendant thirty (30) bonds and three hundred (300) shares of the Northwestern Portland Cement Company, and in consideration therefor, there was delivered to the plaintiffs the promissory note of said defendant set forth in said report and findings, and that at the same time Charles D. Rand delivered to this defendant five (5) bonds and fifty (50) shares of the stock of said Northwestern Portland Cement

Company, and thereupon and at the same time, and in consideration therefor, this defendant delivered to said Rand its promissory note in his favor in said findings referred [84] to, and at the same time T. R. Stockett delivered to this defendant three (3) bonds and thirty (30) shares of the stock of said Northwestern Portland Cement Company, and thereupon and at the same time, and in consideration therefor, this defendant delivered to said Stockett the promissory note in his favor in said findings referred to, and that at the same time Thomas Graham delivered to this defendant one (1) bond and ten (10) shares of the stock of said Northwestern Portland Cement Company, and thereupon and at the same time, and in consideration therefor, this defendant delivered to said **Graham its promissory** note in his favor referred to in said report and findings; said finding is not warranted, justified or sustained by the evidence, but is contrary to the evidence and to the weight and effect of the evidence; and said Referee hath failed to find, but should have found, that none of said bonds or shares of said stock of said Northwestern Portland Cement Company in said finding numbered "VI" referred to, were ever delivered to this defendant, or came into its possession, or under its control or passed into its treasury, but, on the contrary, said bonds and stock were delivered to and received by and passed into the treasury of said Northwestern Portland Cement Company; and said Referee hath failed to find, but should have found, that none of the above-mentioned promissory notes was executed and delivered or executed

or delivered, for a valuable or any consideration whatever paid and delivered, or paid or  
**Overruled.** delivered, by the respective or any payees, or payee, of said notes, or of any of them, to this defendant on May 5, 1908, or at any other time, or at all.

THIRD.—For that the said Referee in his said report and findings, in the finding numbered “VII” hath omitted to find upon other issues presented by the answer of this defendant in the above-entitled action, and hath found that the same issues were presented [85] in the equity cause, number 15,249, tried at the same time with the above-entitled action, and that said issues were in said equity cause determined adversely to this defendant, who was complainant therein; and in this behalf, this defendant objects to said report and findings upon the ground that the other issues referred to in said finding numbered “VII” should have been determined in the above-entitled action whether involved in said equity suit, number 15,249, or not, and further objects that the adverse determination of said other issues in said equity suit number 15,249 was not warranted, justified or sustained by the evidence in that equity suit, but was contrary to the evidence and to the weight and effect of the evidence therein; and that said Referee should have found said issues in said equity action number 15,249 favorably to this defendant, who was complainant therein; and in this behalf, this de-  
**Overruled.** fendant makes express reference to its objections to the Master’s report and findings in the said equity suit num-



bered 15,249 in support of this present objection.

FOURTH.—For that the said Referee, in his said report and findings, hath failed to find, **OVERRULED.** that the financial crisis for the year 1907 began in the spring or summer of that year.

FIFTH.—For that the said Referee, in his said report and findings, hath failed to find, **OVERRULED.** that during the years 1907 and 1908 William J. Dingee was without funds wherewith to carry on any enterprises in which he was then interested, and was insolvent.

SIXTH.—For that the said Referee, in his said report and findings, hath failed to find, that Ernest E. Evans and his assignors, and said plaintiffs received the par value of the bonds found to have been purchased by this defendant, together with accrued interest thereon, up to the date of the promissory notes in said findings referred to. [86]

SEVENTH.—For that the said Referee, in and by his said report and findings hath found, that this defendant has no valid defense against or in the above-entitled action, and is not entitled to any relief against the above-named plaintiffs, and that the above-named plaintiffs are entitled to judgment against this defendant in the manner and form stated in said Referee's conclusions of law in the above-entitled action; said finding is not warranted, justified or sustained by the evidence, but is contrary to the evidence and to the weight and effect of the evidence; and said Referee hath failed to find, but



should have found, that this defendant has a valid defense in and to the above-entitled action at law, and is entitled to the relief prayed for in its answer therein, and that the above-named plaintiffs should take nothing by their action  
**Overruled.** herein, and that this defendant should have judgment herein for its costs.

EIGHTH.—And this defendant further objects to said findings, and to each of them, upon the ground that said Referee hath erred in not granting the relief prayed for by this defendant, and in giving, making and rendering his report and findings in favor of the above-named plaintiffs and against the above-named defendant; and erred in not giving, making and rendering his report and findings in the above-entitled cause in favor of the above-named defendant and against the above-named plaintiffs; and erred in giving, making and rendering his report and findings in the above-entitled cause in favor of said plaintiffs and against said defendant upon the pleadings, evidence and record in the above-entitled action: and erred in giving, making and rendering his report and findings in the above-entitled cause in favor of said plaintiffs and against said defendant in this, that said report and findings and each and all of them, were and was and are and is contrary to law, and not warranted, justified or sustained by the evidence, but [87] is contrary to the evidence  
**Overruled.** and to the weight and effect of the evidence and to the case made and stated in the pleadings, evidence and record in the above-entitled cause.

In all of which particulars this defendant submits that the draft of said report and findings ought to be varied, altered, amended and corrected.

MORRISON & BROBECK,

MORRISON, DUNNE & BROBECK,

J. J. DUNNE,

Attorneys for Standard Portland Cement Corporation,  
Defendant Above Named.

The above objections having been considered, ordered that they and each of them are overruled this 22d day of December, 1911.

H. M. WRIGHT,

Master in Chancery, Sitting as Referee.

Service by receipt of copy of within Original Objections to Referee's report and findings is hereby admitted this 20th day of December, A. D. 1911.

PAGE, McCUTCHEN, KNIGHT &  
OLNEY,

Attorneys for Plaintiffs.

[Endorsed]: Filed Dec. 20, 1911. H. M. Wright,  
Master in Chancery.

Filed Dec. 22, 1911. Southard Hoffman, Clerk.  
By W. B. Maling, Deputy Clerk. [88]

*District Court of the United States, Northern District of California, Second Division.*

(Formerly In the Circuit Court of the United States,  
Ninth Judicial Circuit, Northern District of  
California.)

No. 14,887.

ERNEST E. EVANS, GEORGE COLEMAN, and  
PERCY W. EVANS, Partners, Doing Business Under the Firm Name of EVANS.  
COLEMAN & EVANS,

Plaintiffs,

vs.

STANDARD PORTLAND CEMENT CORPORATION, a Corporation, WILLIAM J. DINGEE and IRVING A. BACHMAN,

Defendants.

**Stipulation [That Objections to Draft Report of  
Master-Referee shall Stand as Exceptions Before Court].**

In the above-entitled case, it is hereby stipulated by and between the parties hereto that the objections heretofore filed before the Master-Referee to the

draft report shall stand as and in lieu of the exceptions filed before the court.

Dated January 5th, 1912.

OLNEY, PRINGLE & MANNON,  
PAGE, McCUTCHEN, KNIGHT &  
OLNEY,

Attorneys for Plaintiffs.

MORRISON & BROBECK,  
J. J. DUNNE,

Attorneys for Defendant, Standard Portland  
Cement Corporation.

[Endorsed]: Filed Jan. 5, 1912. Jas. P. Brown,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [89]

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*District Court of the United States, Northern Dis-  
trict of California, Second Division.*

(Formerly In the Circuit Court of the United States,  
Ninth Judicial Circuit, Northern District of  
California.)

No. 14,887.

ERNEST E. EVANS, GEORGE COLEMAN and  
PERCY W. EVANS, Partners, Doing Busi-  
ness Under the Firm Name of EVANS,  
COLEMAN & EVANS,

Plaintiffs,

vs.

STANDARD PORTLAND CEMENT CORPORA-  
TION, a Corporation, WILLIAM J. DIN-  
GEE and IRVING A. BACHMAN,

Defendants.

**Order [That Objections Before Master-Referee  
Stand as Exceptions Before Court].**

On stipulation of counsel this day filed:

IT IS HEREBY ORDERED that the objections filed in the above-entitled cause before the Master-Referee, stand as and in lieu of exceptions filed before the Court.

Dated January 5th, 1912.

WM. C. VAN FLEET,  
Judge.

[Endorsed]: Filed Jan. 5, 1912. Jas. P. Brown,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [90]

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At a stated term, to wit, the March term, A. D. 1912, of the District Court of the United States, of America, in and for the Northern District of California, Second Division, held at the Courtroom in the City and County of San Francisco, on Wednesday, the 24th day of April, in the year of our Lord one thousand nine hundred and twelve. Present: The Honorable WILLIAM C. VAN FLEET, District Judge.

No. 14,887.

ERNEST E. EVANS et al.

vs.

STANDARD PORTLAND CEMENT CORPORATION et al.

**Order Overruling Objections to Referee's Report and Findings; [Confirming Said Report and Findings, and Directing Entry of Judgment Accordingly].**

Defendant's objections to the Referee's report and findings came on this day to be heard, and after arguments by the attorneys were submitted, and after full consideration it was ordered that the said objections be and the same are hereby overruled; that the Referee's report and findings be confirmed, and that judgment be entered accordingly, to which ruling defendants then and there duly excepted. [91]

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*In the District Court of the United States in and for the Northern District of California, Second Division.*

No. 14,887.

ERNEST E. EVANS, GEORGE COLEMAN and  
PERCY W. EVANS, Partners Doing Business Under the Firm Name of EVANS,  
COLEMAN AND EVANS,

Plaintiffs,

vs.

STANDARD PORTLAND CEMENT CORPORATION, a Corporation, WILLIAM J. DINGEE and IRVING A. BACHMAN,

Defendants.

**Judgment.**

The above-entitled action having by stipulation of parties been referred to H. M. WRIGHT, Master



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in Chancery of the above-entitled court, as Referee, to take and hear the evidence therein and report the same to the Court, together with his Findings of Fact and Conclusions of Law, by an Order of Reference reading as follows: [92]

*"In the Circuit Court of the United States, Ninth Circuit, in and for the Northern District of California.*

No. 14,887.

ERNEST E. EVANS, GEORGE COLEMAN and  
PERCY W. EVANS, Partners Doing Business Under the Firm Name of EVANS,  
COLEMAN & EVANS.

Plaintiffs.

vs.

STANDARD PORTLAND CEMENT CORPORATION, a Corporation, WILLIAM J. DINGEE and IRVING A. BACHMAN.

Defendants.

No. 15,249.

STANDARD PORTLAND CEMENT CORPORATION, a Corporation.

Plaintiff.

vs.

ERNEST E. EVANS, GEORGE COLEMAN and  
PERCY W. EVANS, Partners Doing Business Under the Firm Name of EVANS,  
COLEMAN & EVANS.

Defendants.

ORDER OF COURT.

In accordance with the stipulation of all the parties to the two above-entitled causes:

IT IS HEREBY ORDERED that both said causes be and the same are hereby referred to H. M. WRIGHT, Master in Chancery of this court, as Referee, to take and hear the evidence therein and report the same to the Court, together with his Findings of Fact [93] and Conclusions of Law.

IT IS FURTHER ORDERED, in accordance with said stipulation, that said reference and the Findings of Fact and Conclusions of Law of said Referee are, in each of said causes, to be advisory of the Court only and of the same effect as a reference and a report of the Referee in a suit in equity in said court, and upon said Referee returning his report to the Court the same shall, in each of said causes, be subject to confirmation or to modification or rejection by the Court upon exceptions by any party, in accordance with Equity Rule 83 and the practice of the Court in cases of reference in suits in equity.

IT IS FURTHER ORDERED, in accordance with said stipulation, that the evidence in both of said causes be taken and heard by said Referee at one and the same time and that all of the evidence taken and heard be considered as taken and heard in each of said causes, so far as such evidence may be applicable to the issues therein; that the trial of said causes before said Referee and the taking and hearing of evidence therein be in the manner and subject to the rules and practice governing the trial in the above-entitled court of actions at law tried by the Court

without a jury, and that the Referee report the evidence taken and heard by him and his Findings of Fact and Conclusions of Law in each of said causes to the Court at one and the same time.

(Signed) W. C. VAN FLEET,  
Judge of the Circuit Court of the United States,  
Ninth Circuit, in and for the Northern District  
of California.

Dated April 3, 1911." [94]

—and said action having come on regularly for hearing before said Referee and oral and documentary evidence having been introduced on behalf of the plaintiffs and on behalf of the defendants, and the matter having been submitted to said Referee for decision and report, and said Referee having made and returned to the Court his report, together with his Findings of Fact and Conclusions of Law, wherein said Referee reports that the plaintiffs are entitled to judgment against each and all of the defendants for the sum of Thirty-nine Thousand Dollars (\$39,000), together with interest from the 1st day of May, 1908, at the rate of six (6) per cent per annum, compounded semi-annually, and for costs, and exceptions having been filed by the defendant Standard Portland Cement Corporation to said report, together with said Findings of Fact and Conclusions of Law, and the same having come on duly to be heard by the Court, J. J. Dunne appearing for said defendant and Warren Olney, Jr., appearing for the plaintiffs, and said exceptions having been argued and submitted to the Court for ruling, and the Court being fully advised, having made its order overruling said

exceptions, and confirming said report, together with said Findings of Fact and Conclusions of Law, and directing judgment for the plaintiffs and against the defendants in accordance with said report.

NOW, THEREFORE, by virtue of the law and by reason of the premises aforesaid,

IT IS ADJUDGED by the Court that Ernest E. Evans, George Coleman and Percy W. Evans, plaintiffs, do have and recover of and from Standard Portland Cement Corporation, a corporation, William J. Dingee and Irving A. Bachman, defendants, the sum of Forty-nine [95] Thousand Four Hundred and Four and 3/100 Dollars (\$49,404.03), together with costs of plaintiffs in this behalf, taxed at One Hundred Thirty-Five & 90/100 (\$135.90) Dollars.

Judgment entered April 24th, 1912.

JAS. P. BROWN,

Clerk.

By W. B. Maling,

Deputy Clerk.

A true copy.

[Seal]

Attest: JAS. P. BROWN,

Clerk.

By W. B. Maling,

Deputy Clerk.

[Endorsed]: Filed April 24, 1912. Jas. P. Brown, Clerk. By W. B. Maling, Deputy Clerk. [96]

**[Certificate of Clerk U. S. District Court to  
Judgment-roll.]**

*In the District Court of the United States for the  
Northern District of California, Second Division.*

No. 14,887.

ERNEST E. EVANS et al.

vs.

STANDARD PORTLAND CEMENT CORPORATION et al.

I, Jas. P. Brown, Clerk of the District Court of the United States for the Northern District of California, do hereby certify that the foregoing papers hereto annexed constitute the Judgment-roll in the above-entitled action.

ATTEST my hand and the seal of said District Court, this 24th day of April, 1912.

[Seal]

JAS. P. BROWN,  
Clerk.

By J. A. Schaertzer,  
Deputy Clerk.

[Endorsed]: Filed April 24th, 1912. Jas. P. Brown, Clerk. By J. A. Schaertzer, Deputy Clerk.  
[97]



*In the Circuit Court of the United States, Ninth Circuit, in and for the Northern District of California.*

No. 14,887.

ERNEST E. EVANS, GEORGE COLEMAN and  
PERCY W. EVANS, Partners Doing Business Under the Firm Name of EVANS,  
COLEMAN and EVANS,

Plaintiffs,

vs.

STANDARD PORTLAND CEMENT CORPORATION, a Corporation, WILLIAM J. DINGEE and IRVING A. BACHMAN,

Defendants.

**Bill of Exceptions.**

BE IT REMEMBERED, that subsequent to the filing of the answer of the defendant Standard Portland Cement Corporation in the above-entitled cause, said Standard Portland Cement Corporation filed a bill in equity in the above-entitled court against the plaintiffs in the above-entitled action, wherein and whereby said Standard Portland Cement Corporation prayed and sought to enjoin the further prosecution of the above-entitled action at law and to have the promissory notes upon which the plaintiffs in the above-entitled cause seek to recover declared null and void and not binding upon said Standard Portland Cement Corporation and to have said promissory notes delivered up and cancelled.

That in due time thereafter, the plaintiffs in the



above-entitled action answered said bill in equity and thereafter, in due time, said Standard Portland Cement Corporation filed in the above-entitled court its replication to said answer. That said bill in equity, answer and replication present the same issues of fact as those presented by the second separate and distinct answer and defense set up in the answer of said Standard Portland Cement [98\*—1†] Corporation in the above-entitled action.

That thereafter it was stipulated in both the above-entitled cause and in said suit in equity as follows:

*In the Circuit Court of the United States, Ninth Circuit, in and for the Northern District of California.*

No. 14,887.

ERNEST E. EVANS, GEORGE COLEMAN and  
PERCY W. EVANS, Partners Doing Business Under the Firm Name of EVANS,  
COLEMAN & EVANS,

Plaintiffs,

vs.

STANDARD PORTLAND CEMENT CORPORATION, a Corporation, WILLIAM J. DINGEE and IRVING A. BACHMAN,

Defendants.

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\*Page-number appearing at foot of page of certified Transcript of Record.

†Original page-number appearing at foot of page of Bill of Exceptions as same appears in Certified Transcript of Record.

No. 15,249.

STANDARD PORTLAND CEMENT CORPORATION, a Corporation,

Plaintiffs,

vs.

ERNEST E. EVANS, GEORGE COLEMAN and  
PERCY W. EVANS, Partners Doing Business Under the Firm Name of EVANS,  
COLEMAN and EVANS,

Defendants.

**Stipulation [Waiving Jury in Case No. 14,887, That Causes be Referred to Master as Referee, etc.].**

IT IS HEREBY STIPULATED AS FOLLOWS:

1. That a jury be waived in the first of the above-entitled causes, to wit: No. 14,887.

2. That both the above-entitled causes be referred to H. M. Wright, Master in Chancery of the above-entitled court, as Referee, to take and hear the evidence therein and report the same to the Court, together with his findings of fact and conclusions of law, but said reference and the findings of fact and conclusions of law of said Referee are, in each of said causes, to be advisory of the [99—2] court only and of the same effect as a reference and report of the Referee in a suit in equity in said court, and upon said Referee returning his report to the Court the same shall, in each of said causes, be subject to confirmation or to modification or rejection by the Court upon exceptions by any party in accordance with

equity Rule 83, and the practice of the court in cases of reference in suits in equity.

3. That the evidence in both of said causes be taken and heard by said Referee at one and the same time, and that all of the evidence taken and heard in each of said causes so far as such evidence may be applicable to the issues therein. That the trial of said causes before said Referee and the taking and hearing of evidence therein be in the manner and subject to the Rules and Practice governing the trial in the above-entitled court on actions at law tried by the Court without a jury.

4. That said Referee report the evidence taken and heard by him and his findings of fact and conclusions of law in each of said causes to the Court at one and the same time.

J. R. PRINGLE,  
OLNEY, PRINGLE & MANNON,  
PAGE, McCUTCHEON, KNIGHT,  
& OLNEY,

Attorneys for E. E. Evans, George Coleman and  
Percy W. Evans, Partners Doing Business  
Under the Firm Name of Evans, Coleman &  
Evans,

MORRISON, COPE & BROBECK,  
MORRISON & BROBECK and  
J. J. DUNNE,

Attorneys for Standard Portland Cement Corpora-  
tion.

WILLIAM M. CANNON,  
Attorney for William J. Dingee and Irving A. Bach-  
man.

[Endorsed]: #14,887. Circuit Court of the United States, Northern District of California, Ninth Circuit. Ernest E. Evans et al., Plaintiff, vs. Standard Portland Cement Corporation, a Corporation, Defendants. [100—2a] Stipulation. Filed April 3, 1911. Southard Hoffman. By W. B. Maling, Deputy Clerk. Page, McCutcheon, Knight & Olney, 1111 Merchants' Exchange Building, San Francisco, California, Attorneys for Plaintiff.

That thereafter, and in accordance with said stipulation, the Court made its order both in the above-entitled cause and in said suit in equity, as follows:

**[Order Referring Causes to Master in Chancery as Referee, etc.]**

*In the Circuit Court of the United States, Ninth Circuit, in and for the Northern District of California.*

No. 14,887.

ERNEST E. EVANS, GEORGE COLEMAN and  
PERCY W. EVANS, Partners Doing Business Under the Firm Name of EVANS,  
COLEMAN and EVANS,  
Plaintiffs,

vs.

STANDARD PORTLAND CEMENT CORPORATION, a Corporation, WILLIAM J. DINGEE and IRVING A. BACHMAN,  
Defendants.

No. 15,249.

STANDARD PORTLAND CEMENT CORPORATION, a Corporation,

Plaintiff,

vs.

ERNEST E. EVANS, GEORGE COLEMAN and  
PERCY W. EVANS, Partners Doing Business Under the Firm Name of EVANS,  
COLEMAN and EVANS,

Defendants.

### ORDER OF COURT.

In accordance with the stipulation of all the parties to the two above-entitled causes:

It is hereby ordered, that both said causes be, and the same are, hereby referred to H. M. Wright, Master in Chancery of this court as Referee to take and hear the evidence therein and report [101—2b] the same to the Court, together with his findings of fact and conclusions of law.

It is further ordered, in accordance with said stipulation, that said reference and findings of fact and conclusions of law of said Referee are in each of said causes to be advisory of the Court only and of the same effect as a reference and a report of the Referee in a suit of equity in said court, and upon said Referee returning his report to the Court the same shall, in each of said causes, be subject to confirmation or to modification or rejection by the Court upon exceptions by any party in accordance with equity Rule 83, and the practice of the court in cases of reference to suits in equity.

It is further ordered, in accordance with said stipulation, that the evidence in both of said causes be taken and heard by said Referee at one and the same time, and that all of the evidence taken and heard be considered as taken and heard in each of said causes, so far as such evidence may be applicable to the issues therein; that the trial of said causes before said Referee and the taking and hearing of evidence therein, be in the manner and subject to the rules and practice governing the trial in the above-entitled court of actions at law tried by the Court without a jury, and that the Referee report the evidence taken and heard by him and his findings of fact and conclusions of law in each of said causes to the Court at one and the same time.

WM. C. VAN FLEET,

Judge of the Circuit Court of the United States,  
Ninth Circuit, in and for the Northern District  
of California.

Dated Apl. 3d, 1911.

[Endorsed]: No. 15,249. Circuit Court of the United States, Northern District, Ninth Circuit. Standard Portland Cement Corporation, a Corporation, Plaintiff, vs. Ernest E. Evans et al., Defendants. [102—2c] Order of Court. Filed April 3, 1911. Southard Hoffman, Clerk. By W. B. Maling, Deputy Clerk. Page, McCutcheon, Knight & Olney, 1111 Merchants' Exchange Building, Attorneys for Defendants.

**[Testimony, Evidence, etc.]**

That thereafter, in accordance with said order, the above-entitled cause, together with said suit in equity,



came on regularly for hearing on Monday, May 22, 1911, before Hon. H. M. Wright, Master in Chancery, Warren Olney, Jr., and J. R. Pringle, appearing for the plaintiffs in the above-entitled cause, and W. I. Brobeck and J. J. Dunne appearing for the defendants. Thereupon the following proceedings were had, and testimony and evidence taken and received. The above-named defendants offered in evidence the deposition of Ernest E. Evans, one of the above-named plaintiffs; said deposition was received and read in evidence, and is as follows, to wit:

**[Deposition of Ernest E. Evans, for Defendants.]**

Direct Examination of ERNEST E. EVANS.

My name is Ernest Edward Evans. My age is 48. As to my place of residence, I have just sold out my business. Vancouver is my home at present. My occupation has been that of general merchant—shipping agent and commission merchant—and I have been in that business about twenty-one years. I carried it on at Vancouver, British Columbia. My business had connections in the State of California, simply by buying and [103—2d] selling, you might say, down here; I mean to say we were the authorized agents of Balfour, Guthrie & Co., and we used to do a large business together. We were shareholders in the Western Fuel Co., and we were shareholders in the Central Brick Co., and the Western Gypsum Co., and we were shareholders in the Northwestern Portland Cement Co. I never met William J. Dingee. I met Irving A. Bachman once; he came to Vancouver to meet John L. Howard and myself, and we proceeded

(Deposition of Ernest E. Evans.)

to a place called Kendal, near Sumas, in the State of Washington. Kendal is in Whatcom County, I think; I am not sure. That visit which I made to Kendall, in Whatcom County, in the State of Washington, had to do with the production of cement—it was to inspect certain properties. Mr. Howard proposed that visit to inspect those properties; I went with Mr. Howard and a Mr. Riedle and Dr. Bachman. This was prior to the incorporation of the Northwestern Portland Cement Co.; and it was the only time when I met Dr. Bachman. I never met Edward McGary. The full name of Mr. Coleman, who was formerly my partner, is George. Evans, Coleman & Evans had been partners for years; Mr. Coleman is my brother in law, and Mr. Percy Evans is my brother. I am acquainted with Mr. Stockett, Mr. Rand and Mr. Graham. Mr. Rand lives at Vancouver; Mr. Stockett and Mr. Graham live at Nanaimo. Mr. Stockett is Superintendent of the Western Fuel Co.; and Mr. Graham is the Underground Manager, I think, that is his title, I am not sure. Mr. Rand is a real estate agent. Mr. Rand has never met Mr. Howard. As to Mr. Stockett and Mr. Graham, Mr. Howard is President of the Western Fuel Co., and consequently they are under him; and, of course, they know him quite well. I don't know Mr. Foster Young.

As to when I first heard of the Western Fuel Co., as I told you before, we are very intimate with Balfour, [104—2e] Guthrie & Co., and for twenty years we have represented what used to be the Van-

(Deposition of Ernest E. Evans.)

couver Coal Company, when I first went to the country; then it was the New Vancouver Mining & Land Co.; and then they sold out to a syndicate down here, of which Mr. Howard was the organizer; and he was very intimate with the Balfours, and it was through the connection with the Balfours that we heard of it and took shares. When the Western Fuel Co. first came out, we only took \$15,000 worth of stock in it; and afterwards we only increased our holdings to 181 shares, or \$18,100.00. The executive manager of the Western Fuel Co. in San Francisco was Mr. John L. Howard; and up in Nanaimo, Mr. Thomas Russell was the Superintendent. At that time, Mr. Stockett was not employed by the Company. I am not quite positive about Mr. Graham, but I am almost sure not. Mr. Russell was there, to my recollection, about eighteen months, and he was found not up-to-date, and Mr. Howard appointed Mr. Stockett. Mr. Stockett has been in the employ of that Company for some time past. I think Mr. Graham came over shortly after Mr. Stockett; I am not positive; I don't know very much about Mr. Graham,—of course, I have met him two or three times. As to who were the original directorate of the Western Fuel Co., I am not positive about the whole thing; I know that Mr. Howard was the President, Mr. Joe Schmidt was a Director, Mr. Robert Bruce, of Balfour, Guthrie & Co. was a Director, Mr. J. B. Smith was a Director, and I am not sure whether Mr. Sidney Smith was a Director; he became a Director eventually, but whether he did at the inception, I could not tell you.

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The Secretary was Mr. D. C. Norcross. The Western Fuel Co. is still in existence and we still retain our holdings; they are split up since we dissolved partnership.

I have heard of a corporation known as the Western [105—3] Building Materials Co.; I learned it first of all from Mr. John L. Howard. Of course, when they started the Western Fuel Co., they were not only dealing in fuel, but they took over the J. C. Wilson business, dealing in coke and pig iron and bricks,—different building material, I think. I understood that the Western Fuel Co. had a retail Coal business, at least the Wilson people had a retail coal business. The Western Fuel Co. and the Western Building Materials Co. dealt in cement; I don't know whether the Western Fuel Co. handled the cement first, or whether this Building Material Co. was formed before they handled cement. Until the works at Napa, California, were started, they used to handle imported cement; in fact, I know they did. Eventually, they handled cement for the Santa Cruz Portland Cement Co. Outside of those two corporations, and the imported cement, I don't know that they handled cement for any other corporation,—I think not. I understand that the Standard Portland Cement Corporation is the same thing as the Napa company. I don't know whether the Standard Portland Cement Corporation was successor to any other corporation.

Mr. Dingee and Mr. Bachman promoted the Northwestern Portland Cement Co. ; they organized that corporation.

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Q. Was Mr. Howard in any way interested in that transaction? A. In what way?

Q. In any way whatever? A. As a promoter?

Q. Either as a promoter, or an organizer, or an assistant in any way, in the establishment of that corporation. A. I don't think so.

I went to a place named Kendall, Whatcom County, Washington, to inspect some lands and Mr. Howard was with me. As to the interest which Mr. Howard had in the inspection of those lands, Mr. Howard was representing these two cement [106—4] companies down here,—the Standard and the Santa Cruz; the Santa Cruz was not producing at the time; and I knew that Mr. Dingee was really anxious to have works in the State of Washington,—I learned that through Mr. Howard. Mr. Howard informed me prior to the earthquake down here that Mr. Dingee wanted to control the cement situation on this Coast, and for that purpose (of course, the Standard Portland Cement Corporation Company, or whatever it was at that time, was a financial success, and the Santa Cruz works were then in course of construction.) Mr. Howard—I knew at that time that the Standard Portland Cement Corporation at that time was a financial success, because I had friends of mine outside of Mr. Howard who were shareholders and bondholders in it. Mr. Howard asked me if I knew of a suitable property in the State of Washington; the reason he asked me was because he knew that I was one of the pioneers in investigating the cement business on this Coast, and I had a half



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interest in a property in the State of Washington. I have taken considerable interest in the development of the cement business before the Standard Portland Cement Corporation was started. Mr. Howard asked me the position of this property. Well, after the disaster took place here,—he was in New York at that time, Mr. Howard was, and he came back to San Francisco, and he came to me asking the position of the property that I was jointly interested in with Balfour, Guthrie & Co.; and I told him that we were half committed to some people at Antwerp, but that if he made a bid I could probably arrange to get hold of the property. He then telegraphed up, and made a bid on behalf of Mr. Dingee; and I phoned my associates, Balfour, Guthrie & Co., at Tacoma, and told them that they would either have to buy or sell or I would buy or sell,—that was all telephoned from my office. Then, as the Balfour, [107—5] Guthrie people and myself could not come to terms, they asked me if I would accompany Mr. Burns, their Portland partner, down to San Francisco, to consult the other partners here,—that is Mr. Bruce Mr. Sansom and Mr. Alec Williamson. I came down here towards the end of May, 1906, and Mr. Howard met me on the train at 16th Street, Oakland, and asked me what hotel I was going to, and invited me, if I was not going to stop with any one else, to stop with him; and he said, “I know Mr. Bruce has first call.” Well, then, I asked Mr. Howard if he had a fair offer from Mr. Dingee for this property, and he said that he had, and I was authorized to buy the



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Balfour, Guthrie & Co.'s interest—I mean I was not willing to be in an uncertain position, because I had said to Balfour, Guthrie & Co., “You have either got to buy, or sell, to me,” and I wanted to be in a position if they said, “We will sell,” to buy, and so be put into that position. And I had an interview at Mr. Williamson's house on Washington Street, and we did not come to terms that afternoon, and they asked me to wait until the morning; in the meantime, they had cabled over to their head office in London, stating that I was there, and that I would either buy or sell, and asking what to do; apparently the reply came back, “We are in favor of buying,” because they bought me out; I understand that two days afterward—I told them who I was negotiating for—for Mr. Dingee and for Mr. Howard—and I heard through Mr. Balfour that two or three days afterward they put an offer in writing to Mr. Howard to be submitted to Mr. Dingee. I made it a stipulation with Mr. Balfour that they would offer the property to Mr. Dingee. The offer was written out and handed to Mr. Dingee—to Mr. Howard; he submitted it to Mr. Dingee, who considered the terms exorbitant and would not have anything to do with it. After I sold out that time I went home that [108—6] night. After I had been home some little time, I had a letter from Mr. Howard telling me negotiations were off with Mr. Balfour, and stating that Mr. Dingee had made up his mind to have a cement works up in the State of Washington, and that he had got men in the field looking for properties. I then wrote Mr.

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Howard that I knew a man who I thought had a property. He wrote up, "Get particulars, I am coming up." So I got the particulars, and I got the man up to Vancouver to meet Mr. Howard who was making periodical visits to the mine at Nanaimo,—the mine which was operated by the Western Fuel Co. I arranged a meeting with these two and then Mr. Howard decided he would go back and look at the property and asked me to accompany him, which I did. We went over the ground, and Mr. Howard was quite impressed with it, and he telegraphed to Mr. Dingee that he thought that he had found a suitable property, and suggested that he should send Dr. Bachman up. Dr. Bachman eventually came up—I don't know exactly how long afterwards, I think it was within a week—Mr. Howard in the meantime was stopping in Nanaimo, and came over to Vancouver to meet Dr. Bachman, and we three proceeded to this property, to examine it. As to *held* the property at the time, a Mr. Riedle owned some property there, and different owners. Dr. Bachman telegraphed, I understand, the result of his examination to Mr. Dingee, who by telegraph, authorized Mr. Howard to buy the property for him. Some pieces of property were bought and then there was some litigation about some others. The United States Patent was finally secured, but I could not tell by whom. After we had taken up, or they had taken up, a lot of this property, it was discovered that there was one claim—I might say, here is the hill, and this was the limestone ledge we say at the hill (illustrat-

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ing), that we had all the ground down below, and it was discovered [109—7] that some claim—some piece of land, was vacant; that was not discovered until some time afterward. This vacant land was in between the limestone ledge and the site for the factory. It was an object to acquire it because it was on the right of way. The difficulty was that they thought they might have trouble in getting the right of way. Then, I understand—I am not sure about it, but I understand Mr. Howard staked it off as a stone and timber claim, and I know he had a lot of litigation. I believe it took about two years to settle this litigation; he proved up the land—I don't know—I think it was Mr. Howard—I am not sure. The attorney who did work at the Seattle land office was Mr. Randolph. I presume that he was acting for Mr. Howard, who was representing Mr. Dingee. I don't think there were any other attorneys interested in that litigation; we had some attorneys at Bellingham—Newman & Howard—they did the legal work up there. The Howard to whom I have just referred as a member of the Bellingham firm of Newman & Howard, is Mr. C. W. Howard; he is absolutely no relation to John L. Howard.

Q. For his services in and about the procuring of this land and the organization of this Northwestern Portland Cement Co., what, if you know, was Mr. John L. Howard to get?

A. The reason that Mr. John L. Howard took all this active interest was that he was very anxious to start a branch of the Western Building Material Co. in Seattle, and the understanding was that when

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the work started up he was to have the exclusive selling agency of the Northwestern Portland Cement Co., as he had at the same time of the Santa Cruz Portland Cement Co. and the Standard Portland Cement Co. So far as I know he had no other interest in the development of this Northwestern Portland Cement Co. beyond that, except that I suppose—of course, I don't know—but I suppose [110—8] that he was to get some commission in the way of ordinary shares for all the trouble he had taken in finding the property. He was to get these shares as a sort of bonus,—I should think it would be only natural. Mr. Howard told me that he was going to get—that Mr. Dingee had promised him some ordinary shares as a recompense for his services in looking up these properties. In the selection of these properties, in the looking up of these properties, Mr. Dingee took no part personally, and the only part which Dr. Bachman took is the part which I have related here.

I knew Mr. Howard, meeting him in a social way, through Mr. Robert Bruce of Balfour, Guthrie & Co., when he was manager of the Oregon Improvement Company, it is a good many years ago; that is, only in a social way; I had no business relations with him. My business relationship with him began just before the formation of the Western Fuel Co.—I think it was about 1903. Since that time I have had more or less business transactions with the Western Fuel Co.; my firm are the agents of that Company. We still continue the agency for Namaio—up

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at Vancouver. We have been the agents of that concern for over twenty years, and their successors—purchasers—continue with our firm as agents; we still are agents. Since 1903 there has been more or less business transactions between me and my firm and Mr. Howard, particularly in connection with the mines: outside of that not very much. Of course, as I say, Mr. Howard pays several visits a year to the mine, and naturally when he comes from the mines he wants to see me, and he used to come to Vancouver, or I would go to Nanaimo and spend the evening with him. From my acquaintance with Mr. Howard and my knowledge of the general situation I understand that the Northwestern Portland Cement Company [111—9] and the Standard Cement Corporation were independent and disconnected corporations at the time for formation.

Q. After they were formed did you ever learn that one of these corporations became absorbed in the other?

A. You are talking about the Standard Portland Cement Company and the Standard Portland Cement Corporation?

Q. No.

A. I will just tell you, I never knew there had been any change or reorganization in the Standard until I saw this document I have just sworn to.

Q. I don't think you understand me correctly, Mr. Evans, and I will try to make myself clear. I am not asking you as to whether the Standard Portland Company and the Standard Portland Corpora-



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tion were independent corporations; that is not the point of my inquiry; but what I would like to know is, whether you knew, during these times we have been speaking of, whether the Northwestern Portland Cement Company and the Standard Portland Company, or the corporation, were independent and disconnected corporations.

A. Well, I was never told anything to the contrary, and I naturally assumed, of course, they were. The only site which I knew of which the Northwestern Company intended or endeavored to work was situated in the State of Washington in Whatcom County; I believe that they examined other properties you know and they finally decided on this; and on the other hand, the site which was operated by the Standard Portland was in the State of California. I have always understood that Mr. Dingee was in control of these various corporations, the Standard Portland, the Northwestern, and the Santa Cruz. I could not tell exactly when the Northwestern Portland Cement Company was organized or incorporated, but I should think in December, 1906—at all events, in the latter part of the [112—10] year 1906.

Q. After this date, after its organization, was any plant established on this site in Washington—any factory for the production of cement?

A. First of all, all the preliminary work was done, such as the topographical survey of the land, a certain number of acres were cleared, and the spurs or side tracks were put in.



(Deposition of Ernest E. Evans.)

Q. Was the property developed in any other way with reference to the production of cement?

A. I have not visited it since, but I understand—in fact, I know that the lime, you know, was on the side of the hill, and the land was all cleared, and I believe they started to strip the lime deposit. The lime was exposed, but then they had to clear a right of way. Supposing this was a millsite on the level, the lime deposit was up on the hill, and there was some timber between (illustrating). They had to slash the timber and clear it.

Q. Aside from that, what further development was there on that property, with particular reference to the production of cement?

A. Well, beyond starting this preliminary work, clearing, and building the side track, so far as I can make out nothing else was done. No factory was constructed there. No mill was built. There was some machinery, I think one or two donkey engines for clearing. And a certain amount of machinery was ordered from the Allis-Chalmers Co., I was told. Aside from these two donkey engines, I do not recollect whether any other machinery was actually brought upon the ground; I have not visited the site since. In speaking of machinery, I remarked that some machinery was ordered, but I could not tell you what became of that machinery; I do not know whether it went on the site, or went [113—11] elsewhere.

Q. Have you ever discussed that matter with Mr. Howard or Mr. Dingee or Dr. Bachman?

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A. The only time I ever saw Dr. Bachman was on that visit. I never met Mr. Dingee. I have not spoken to Mr. Howard about it. Mr. Howard told me nothing as to what became of the machinery that had been ordered; in fact, I never made any inquiries. So far as I know, the Northwestern Portland Cement Company never had a plant, and never turned out a pound of cement. At the present time, it has no plant, and it is not producing in any way. When I said there was certain machinery ordered from the Allis-Chalmers Company, I am not positive about that.

Q. Can you tell me, Mr. Evans, where the funds came from for this machinery?

A. Well, I was informed—

Q. (Intg.) By whom, please?

A. Before I put up my subscription, from Mr. Howard—through Mr. Howard, from Mr. Dingee, that all the money necessary for the erection of these works was actually forthcoming. Here is a letter from Mr. Howard: “Dingee gives me the present subscription list, viz.:

W. F. Dingee.....\$150,000.00

I. A. Bachman.....\$150,000.00

Crocker Bank Crowd.....\$150,000.00

Napa Subscribers .....\$150,000.00

J. L. Howard, placed al-

ready.....\$ 95,000.00.”

That is, J. L. Howard had already placed \$95,000.00; that is, he was placing bonds, and, according to his note J. L. Howard had placed already \$95,-

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000.00. I subscribed for bonds, but not for the stock; the understanding was that for every bond—the bonds that we subscribed for were \$1,000.00 each; we got \$1,000.00 worth of bond stock. We got ten shares of stock for each bond that we purchased,—that is right, they were \$100.00 [114—12] a share. We subscribed for \$45,000.00; that is to say, I sent \$45,000.00 in cash down here; \$30,000.00 was on account of my own firm, \$5,000.00 on account of Mr. C. D. Rand, \$5,000.00 on account of a friend of mine in England, Mr. E. H. Warner, \$5,000.00 on account of another friend of mine in England, W. P. Warner. I know that Mr. Stockett subscribed for bonds, but as to how many, I can only tell you from reading one of these papers of yours; \$3,000.00, I think it was. I found out eventually that Mr. Graham did subscribe; all the information I know is this paper I saw. I have no information on that point of my own knowledge; I knew they had subscribed, but I did not know the amounts.

Q. When did you first hear of the bond issue?

A. Well, I have a letter here dated San Francisco, 10th December, 1906, asking me what my present mind was with regard to subscribing to the bonds of the Northwestern Portland Cement Company. Mr. John L. Howard wrote me that letter.

Q. I observe that this paper is headed, “Extract from letter sent by John L. Howard to E. E. Evans”?

A. That is correspondence I had my stenographer make copies of some time ago so as to keep it by me.

(Deposition of Ernest E. Evans.)

Q. These papers really represent extracts from the correspondence?

A. Well, the whole letters. The various letters and documents from which the extracts are made here, are in the possession of Evans, Coleman & Evans at Vancouver. Now, if you asked me to produce the originals, I don't know whether I can, because we turned our business into an incorporated Company, and now that I am gone (I am going away for five months) whether these people will tear up the old papers going back a certain number of years, or not, I don't know. These papers are all in the possession of Evans, Coleman & Evans, Limited, the incorporation, [115—13] the new style. They have all our old papers, letters and letter-books and that kind of thing; they are stored there. I had these extracts made probably about twenty months ago.

Q. The first information, then, that you had about this bond issue, you received by this letter of December 10th, 1906?

A. I had been told that this company was going to be formed, and, as I tell you I had, and still have, very great confidence in the cement industry in the State of Washington, and I had been right—have been right, right along, and I was very anxious to get in, but provided the thing was properly financed. as you will see from the correspondence here. I did not receive any information about these bonds from any other source than Mr. Howard.

Q. When Mr. Howard asked you what was the state of your mind concerning these bonds, what, if anything, did you say to him?

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A. (Reading:) "In reply to your inquiry as to what my present mind is with regard to taking bonds, my"—This is a letter dated "Vancouver, B. C., 19th December, 1906," from myself, personally, to Mr. John L. Howard,—"In reply to your inquiry as to what my present mind is with regard to taking bonds, my firm's intention right along has been, and still is, to invest \$45,000.00 (say \$15,000.00 each)"—that is, our three partners—"on the basis of two to one"—that is, that would be \$2,000.00 worth of stocks to \$1,000.00 worth of bonds—that is what I understood in the first instance—"but before finally committing ourselves, I think some definite information should be given, or a prospectus issued, as to what the programme is, and what we are subscribing to. For instance, we should know the total nominal capitalization, the amount of cash required (making ample allowances for contingencies) for [116—14] the erection of the works and working capital, whether all of said money required will be forthcoming from the Underwriters, etc. I would also like to know, assuming that \$1,200,000.00 is required, and the nominal capitalization of the company is \$2,000,000.00 in bonds, and \$5,000,000.00 in shares, will \$800,000.00 in shares remain in the Treasury with the \$800.00 unissued bonds, to assist in selling these should more money be required later, or will the promoters take the whole of the ordinary shares in the first issue?" That is all in that letter.

Q. What was the next?

A. I received a letter dated San Francisco, Jan.



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7th, 1907, from Mr. Howard to myself. (Reading:) "I saw Dingee and Bachman at lunch to-day. The N. W. Portland Cement Company will be upon the basis of \$2,000,000 bonds, \$5,000,000 in shares. Enough bonds will be sold, and only enough to put the property into working condition. The amount will be greater if a steam plant must be installed, and less if electric power may be had.

Each \$1,000 bond will carry \$1,000 in shares, and in your case, I have promised you an additional \$1,000 on your \$50,000 subscription in addition to 1,000 shares to you personally out of my promotion stock.

I told both B. & D. what I intended doing"—both Bachman and Dingee—"and that I wanted them to recognize your work by chipping in, and I left it with them to mull over. I'll get you more. Now, the securities are ready for delivery.

If you have not changed your mind in respect of this investment, you might send me your cheque, and I will at once send by express the bonds and shares according to this letter.

If you remit, please wire me.

P. S.—The above means that I contribute \$150,000 of your bonus stock."

Then I telegraphed Mr. Howard on the 9th of Jan., 1907. (Reads:) [117—15]

"Letter received, don't you consider company running great risk going ahead until land matter cleaned up. Is all money required positively in sight and will it be put up at once."



(Deposition of Ernest E. Evans.)

Q. What response did you get to that telegram?

A. Here is a letter dated the 11th of Jan., 1907, from myself to Mr. Howard; this is acknowledging his letter of the 4th and 7th.

Q. Would you mind reading that?

A. (Reads:) "I duly received your letters dated 4th and 7th inst. I presume the latter should have been the 5th inst.

"I note all particulars you give about the Northwestern Portland Cement Co., and am quite prepared to put up our subscription of \$45,000, provided you and your advisors are perfectly satisfied that the company will not be taking any risk in going ahead until the title to your stone and timber claim is clear, and further that all the money liberally estimated, which will be required for the erection of works and working capital will be put up at once, and I wired you to this effect on the 9th inst.

The reason I asked the last question is, that in the event of a sudden panic which may occur at any time"—mind you, this was in January, 1907, the Canadian bankers saw something was going to happen, and we had got nervous—"some of the subscribers might find themselves in a position not to be able to raise the balance of the money to complete their subscriptions, consequently it might then be found difficult to raise the money to complete the works, and those who had already paid in full might have their money tied up.

I enclose rough draft giving details of the company, as I understand them from your letters, and

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would like you to fill any blanks which I have left, and correct me where I am wrong, particularly in connection with the question as to whether the promoters contribute the real estate and deposits of raw material for ordinary [118—16] shares only.” I made out that blank form and Mr. Howard returned it to me filled in. This is his handwriting.

Q. Would you mind reading that, if you please?

A. (Reads:) “The Northwestern Portland Cement Company, Incorporated under the Laws of the State of California.

President, William J. Dingee.

Directors: William J. Dingee.

Irving A. Bachman, V. P.

Edwd. McGary, V. P.

Garrett W. McEnerney.

Frank A. Losch.

Secretary, Frank A. Losch.

Head Office, San Francisco, 1249 Franklin St.

Authorized capital, \$2,000,000.00 in 6% \$1,000.00 1st Mortgage Bonds, secured on the real estate, building, plant, and all assets of the Company, and redeemable on or after Nov. 1, 1911, at \$110. and interest.

\$5,000,000.00 in ordinary shares (50,000 shs. \$100. ea.).

Sufficient bonds only to be sold to erect the plant and provide working capital, each \$1,000.00 bond to carry \$1,000.00 in ordinary shares.

Ordinary shares to the extent of \$3,000,000.00 to be handed the promoters for the real estate and

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deposits of raw material, and for promoting the Company.

The plant to be erected with a nominal daily capacity of 5,000 barrels of Portland cement per diem, and to be operated by steam or electric power as the directors may decide."

I don't know how this got in, but I asked Mr. Howard certain questions and these are his replies (reads): "The Northwestern Cement bonds bear 6% interest to the holders but there is a special coupon 3% addition held by the Trust Company to protect the holders under the California law in respect to the payment of taxes."

I don't understand that even now. Then I asked him about the [119—16a] liability of shareholders under the laws of California. (Reads:) "Your statement as to the liability of shareholders under the California laws is correct, as to the Practice runs with going corporations, but as a matter of fact it will be found that these persons are liable who were shareowners at the time of the creation of the debt, but the record of the company is never gone behind, because a buyer of shares buys them with the assumption that he takes the previous owner's place."

I asked him to define clearly to me, as my understanding was that shareholders in a limited company in California were not strictly limited, as according to our law, but that they were liable for the debts in pro rate proportion to the holding of their shares; and in response to that, he writes me this. This telegram of the 9th which I read,—this is Mr. Howard's

(Deposition of Ernest E. Evans.)

reply to it dated the 10th of Jan., 1907. (Reads:) “Mrs. Howard has phoned to me this morning your telegram delivered at the house, in which you ask whether I regarded it as safe for the Northwestern Portland Cement Company to go ahead in view of the unsettled state of the land titles.

As you know, I have greatly demurred at the delay in starting up there, which is one of the causes of our troubles.

I mean by that, if Dr. Bachman had proceeded immediately with his plans, he would have been in constant occupation of the Riedle tract, and nobody could or would have jumped it, but in view of the present situation I have felt free and justified in taking the money from some of my friends and investing it for their account in Northwestern Cement bonds carrying an equal amount of stock as a bonus.

My reason for this is, on January 4th, Mr. Howard reported”—that is C. W. Howard—“that all the assessment work on the Riedle claims had been done, and that on the next day he would file the notice of proof and apply for a patent.

There are no adverse claimants in respect of these claims. [120—16b]

Now, with regard to my own eighty acres, of course the appeal taken by Gregory will hold up my stone and timber application, and pending the decision of the General Land Office, neither Birdwell, Meaney, myself, or anyone else can enter into occupation of that land, but

FIRST:—I am perfectly satisfied that Birdwell

(Deposition of Ernest E. Evans.)

and his backers will be thrown out of court, and I think Randolph's view"—that is the lawyer that was employed in Seattle—"on this point is correct, but considering that nothing is certain in law until you have got it, we know as a fact that Mr. Birdwell did not conform to the law by doing so much work on his locations within the sixty days prescribed by law.

SECONDLY:—Mr. Randolph has consented, and believes it to be a good move, that new placer locations shall be put upon those lands in my interest. They will entitle the new locator to proceed with development work for assessment purposes, and that work can be made to conform to the general and to ultimate plans for the quarry development; so that to my mind it seems clear that I must win on either or both of these propositions.

But up to the time Mr. Howard and Mr. Randolph coincided with the view that new placer locations could be made, and that if made assessment work could be done, I must confess that I thought any action in respect of the sale of securities was a little bit premature.

My view, however, is different now.

The option on the railroad shares has been taken up, and I will probably be elected Vice-President of the railroad company. Mr. Taylor, representing the Mills' interest, will continue as President.

After the Western Fuel Company's annual meeting in February I expect to go north, via. Bellingham.

If you should agree with my view in respect of the



(Deposition of Ernest E. Evans.)

Northwestern [121—16c] Portland Cement Company's securities and take them up, you may rest assured that I will look after your interests in that matter just as closely as I will look after my own."

He followed that up by another letter dated San Francisco, Jan. 11th, 1907. (Reads:) "Yesterday the telephone was working so badly that the whole of your message was not understood, and on arrival at home last night I found your telegram.

The part that I did understand, I answered yesterday. Now, you ask, 'Is all the money positively in sight, and will it be put up at once?'

Mr. Dingee informs me that more than one-half is already subscribed, and the balance of it is assured.

I want to stand under my load of \$100,00; pay it in and get rid of it.

It means that when paid the bonds will begin to bear interest from that date, and if it is to be paid it might just as well be paid first as last.

He and Bachman are taking \$150,000 each; the crowd in the Crocker-Woolworth will take at least \$150,000 with the expectation of more. Napa subscribers, I was informed by Dr. Bachman, wanted about \$125,000, and no special effort has yet been made to push it.

I have not had time as pressure of work and the difficulty of getting about the city has prevented.

You have no idea how irksome it is travelling through the mud in this rainy weather."

Mr. PRINGLE.—That goes on to the description of San Francisco at that time. I don't think you



(Deposition of Ernest E. Evans.)

want that in the record.

Mr. DUNNE.—No.

The WITNESS.—(Reads:) “I was able to see Mr. Dingee for only a few minutes before lunch, and this is the word that I got.

If, therefore, you feel satisfied with this, and yesterday’s [122—16d] explanation of the conditions and my opinions, would it not be just as well to make the investment first as last, and begin to realize the 6 per cent on it.

“The factory will most assuredly be built, and as Dr. Bachman left here yesterday for the east, among other things to meet the construction contractor Stewart, the latter will come out to the Coast immediately.”

On receipt of that letter, I telegraphed from Vancouver, dated the 14th of Jan., 1907. (Reads:) “Yours tenth received, mailing 45,000 Frisco to-morrow. Have securities made out in my name.” On the 14th, I wrote Mr. Howard as follows (reads): “I am in receipt of your favor of the 10th inst. and note from same that you do not consider that the Northwestern Portland Cement Co. will be taking any risk whatsoever in going ahead with their enterprise, in the present unsettled state of the land titles.

On the strength of this, I have just wired you that I will remit a draft to-morrow for \$45,000, addressed to you c/o The Western Fuel Co., 340 Stewart Street, San Francisco, on the Anglo-California Bank.

I have asked you to have all the securities made out in my name, to start with, and will transfer them into

(Deposition of Ernest E. Evans.)

different names later. I have put them in my name on the assumption that supposing in the course of years the company gets into debt, and there is an assessment levied on the ordinary shares under company laws of the State of California, that only the shareholders on the register at the time same is levied are liable, and that once shares are transferred the original owners are not liable.

I am afraid you will think me too careful, but I do not wish to take any technical risk whatsoever.

I am quite satisfied with your statement that you will look after my interests as if they were your own. I feel quite confident provided that we are not held up on account of titles, and [123—16e] that the business is managed properly, that it will be a great commercial success, and if no time is lost, the work should be ready for operation in July, 1908."

Then I wrote you on the 15th of Jan., 1907. (Reads:) "Referring to mine of yesterday addressed to Oakland I now beg to enclose draft \$45,000.00 in your favor, on the Anglo-California Bank, San Francisco."

Then, this is a letter dated San Francisco, 19th, Jan., 1907, from Mr. Howard to myself. (Reads:) "I am sending you by this registered mail certificate of Northwestern Portland Cement Company, viz.:

#66 150 shares

#65 150 "

#64 150 "

These were the bonus from the company with your bonds.

(Deposition of Ernest E. Evans.)

I will send you by express to-day 45—\$1000 bonds, numbered from 123 to 167 inc.

There will be an interest charge for you to pay beginning with the date of the last coupon and running until yesterday.

For this I will send you a memorandum and you may remit. The amount will come back to you on the payment of the first coupons. These you may deposit for collection by your bank, or if you like, send the coupons to me for collection.

Now in your letter of the 14th January received last P. M. at home.

Your statement as to the liability of shareholders under the California laws is correct, as the practice runs with going corporations, but as a matter of fact it will be found that these persons are liable who were shareholders at the time of the creation of the debt, but the record of the company is never gone behind, because a buyer of shares buys them with the assumption that he takes the previous owner's place.

As to the official announcements—

1st. As to the control of the Railway, I will ask Mr. Dingee if he has objections; if not, I will see [124—17] to it that when the new officers and directors are elected at the annual meeting, the names shall be published, and then I will advise you.

2nd. As to the beginning of work, I am awaiting news from Dr. Bachman, now east, as to the starting of Mr. Stewart the constructor, and I will give your office what word I get. I am pushing Dingee, and he realizes the importance of making hay, and I will

(Deposition of Ernest E. Evans.)

have him wire Bachman to-morrow.

Dingee gives me the present subscription list,  
viz.:—

W. J. Dingee.....	\$150,000
I. A. Bachman.....	150,000
Crocker Bank Crowd.....	150,000
Napa Subscribers.....	150,000
J. L. H. placed already.....	95,000

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\$695,000''

Here is a letter sent by John L. Howard to Evans,  
Coleman & Evans. (Reads:)

“San Francisco, 21st January, 1907.

Herewith please find U. S. P. O. receipt #3050 for  
the registered mail package sent you on Saturday,  
and which contained Northwestern Cement Com-  
pany's stock fixtures and check, also Wells Fargo &  
Company's Express receipt for 45-\$1000 bonds of  
Northwestern Cement Company.

We discussed every method of getting these to you,  
and parties experienced in forwarding such valuable  
documents advise us by all means to Express them  
and to declare full value.”

The next one is a letter sent by Mr. Howard ad-  
dressed to the firm. (Reads:)

“San Francisco, 23d January, 1907.

Would you kindly send me your cheque for \$585,  
being interest paid for your account to the North-  
western Portland Cement Company on 45 bonds  
from Nov. 1st, 1906, to January 18, 1907, 78 days at  
6%.”

(Deposition of Ernest E. Evans.)

Q. What does the next one deal with?

A. A letter sent to Mr. Howard by myself dated 24th Jan., [125—17a] 1907. (Reads:) "This is to acknowledge receipt of your favours of 15th and 19th inst., also 45 bonds, share certificates Nos. 64, 65, 66, 68, 69, 70 and 71, covering 1900 shares in the Northwestern Portland Cement Co., also cheque \$2664.76 in settlement of statement for expenditure at Kendall.

Bonds. I note that we are to pay interest from 1st November to 18th inst. and will remit as soon as I receive debit note. The bonds appear to me to be in order, but the point which I am not quite clear on is about the 3% which you informed me some time ago was held by the Trust Company to protect shareholders in respect of the payment of taxes. Am I to understand that this comes to 3% per annum."

The next one is a letter sent by Mr. Howard to my brother, Percy W. Evans. (Reads:)

"San Francisco, Feb. 5th, 1907.

I think I was in England at that time.

I am just in receipt of a letter from Mr. Rosebery, who left here on Wednesday night last, visited Kendall, and has returned. He states that in his judgment *an ideal mill* can be built upon the Kendall property.

I insisted, through Mr. Dingee, on his going there so as to forward the preparations of the plans, and now they will be pushed with all speed."

The next one is a letter sent by John L. Howard to my brother Percy W. Evans. (Reads:)



(Deposition of Ernest E. Evans.)

“San Francisco, 8th March, 1907.

My brother had been—of course, we were all anxious to push the thing ahead, and wanted to know what was being done.

I might say privately, that Bachman told me that the plans were all ready, and based on my talk with him since my return, he has resolved to put in a steam plant, and whenever Hendy and Co. are ready with power they will be in a position to negotiate terms, but meantime they will not wait.” [126—17b]

When he refers to Hendy & Co. that is a Mr. John Hendry of Vancouver, who then controlled what they called the Stave Lake Power Company. They were then going to erect a very large electric power plant for the purpose of making electric power, and it was not so very far from Sumas; and he said that he would himself probably put power down into Sumas; and that is what that refers to. As a matter of fact, he could not raise the money at the time being; but they were erecting an immense power plant there by Montreal capitalists.

The next one is an extract from a letter sent by John L. Howard to Percy W. Evans. (Reads:)

“San Francisco, Cal., April 1st, 1907.

While at home on Saturday nursing an ulcerated tooth and an inflamed throat, I received your two letters, March 23rd, and 25th.

You may be interested to learn that Mr. Fred Davis, a Civil Engineer, went north last night to start the works for the cement plant at Kendall.”



(Deposition of Ernest E. Evans.)

Q. The Kendall there referred to is the Kendall in Whatcom County, Washington, of which we have been speaking this morning?

A. Yes, sir, that is right. Then the next letter is dated San Francisco, May 13th, 1907, from John L. Howard to myself. (Reads:)

“I visited Kendall on Thursday. Found that the right of way had been slashed from the railroad into the factory site, and also ten acres of the forty acre piece that is to contain the factory buildings.

The local engineer *is* charge is awaiting and ordered hoisting engine to pull the stumps.

My feeling is that Dr. Bachman's preoccupation has retarded progress, and I shall at once see if I cannot have a little more dynamite put into the work.”

The next is another letter from John L. Howard to myself. [127—18] (Reads:)

“San Francisco, May 16, 1907.

You spoke to me when I was last in Vancouver about the scope of the financial scheme of the Northwestern Portland Cement Company.

I discussed this to-day with Mr. Dingee.

As you know, the authorized bond issued was \$2,000,000, and the authorized share issued was 5,000,000; one million of the bonds will be sold to carry one million of stock as bonus, and the money realized from this sale will be absolutely devoted to construction purposes and for nothing else.

The other million of bonds with one million of stock will be held in the treasury, and, as you are already aware, the remaining three millions of shares

(Deposition of Ernest E. Evans.)

constituted the promotion stock.

Including what you took, I have placed thus far, \$100,000 of these bonds with the appropriate stock bonus.

If it comes in your way to place any on the basis of one for one, and you will write me, I will arrange the matter."

The next is a letter from myself to Mr. Howard dated Vancouver 17th May, 1907. (Reads:)

"Thanks for yours of the 13th inst. giving result of your visit to Kendall. To say the least I am much disappointed at the apparant lack of interest that Messrs. Dingee and Bachman are taking in the Northwestern Portland Cement Co., and it seems very funny business to me that they should call up all the money and let it lie idle, and pay 6 per cent interest on it. If Bachman has got too much to do, why can't they appoint another manager, and let him rush the work. As it is, it looks to me as if they will lose all the good weather which will practically mean that the works will not be ready for operation until 1909, and had I known there was going to be this delay, I certainly would not have put up my money."

The next is a letter sent to John L. Howard, by myself. (Reads:)

"Vancouver, 20th May, 1907. [128—19]

"Thanks for yours of the 16th inst. giving result of an interview you had with Mr. Dingee, with regard to the financial scheme of the Northwestern Portland Cement Company. I understand from this that the money actually realized from the sale of

(Deposition of Ernest E. Evans.)

bonds is to be absolutely devoted to construction of the works; consequently I assume that the consideration for the \$3,000,000 in Promotion Shares is the land for which I presume no cash is to be paid by the Company. Am I also to understand that the Promoters pay the interest on the bonds during construction, or does the Company do this, and is it charged up to 'Construction Account' out of the proceeds of the bonds?

I refer you to your letter of 11th January last, in which you state that \$700,000 had already been raised, viz.:

Mr. Dingee . . . . .	\$150,000.00
Dr. Bachman . . . . .	150,000.00
Crocker-Woolworth Bank . .	150,000.00
Napa Subscribers . . . . .	150,000.00
John L. Howard . . . . .	100,000.00

Am I to understand that the whole of this money has been paid in and has the remaining \$3000,00 actually been raised? If not, is there going to be any trouble in raising it, in view of the present uncertain state of the money market?"

The next is a letter from John L. Howard to myself, dated San Francisco, 21st May, 1907. (Reads:)

"To yours May 7th.

I regret delay in Northwestern Portland Cement Co. matters as much as you do, but I am informed that they are now being pushed. Bachman is said to be in the east contracting for material and equipment.

Am a bit amused at your account of the visit of

(Deposition of Ernest E. Evans.)

Stone & Webster's men regarding power."

This is not relevant at all.

"If I can influence matters, Mr. Hendry's company will get the finest kind of show because he met us like a business man, [129—19a] whereas the others acted like a lot of boys."

Stone & Webster—you have heard of them—they control nearly all the water-power around Seattle and Bellingham,—a Boston outfit.

The next is a letter sent by Mr. Howard to myself dated San Francisco, 5th June 1907. (Reads:)

"I have been much away from home since receipt of yours 20th May.

Your assumption is correct. I am assured that the money realized from the sale of bonds is to be devoted only to the construction of the works of the Northwestern Cement Company. It is my understanding that the promoters give the land in consideration of the issue to them of promoters' shares. I think it is not usual for promoters to pay interest on bonds during the period of construction. The bonds and interest are a charge against the corporation, and it is customary for the latter to charge interest for that period to Construction Cost.

The list of subscriptions that I gave you in January was given me by Mr. Dingee. I do not know whether it has all been raised, but I assume from what has been said to me that it would be ready when wanted to meet construction expenditures, and, of course, until then bonds will not be issued and interest will not run."

(Deposition of Ernest E. Evans.)

Then, this is a letter dated San Francisco, 12th August, 1907, from Mr. Howard to myself. (Reads:)

“Have you been able to get any information from Mr. Hendry or McNeill regarding the power question?”

I omitted writing you on my return as to what I saw at Kendall. The spur track was laid for 1500 feet from the main line. The right of way was cleared for the balance of the distance, and was being graded.

Altogether the factory site and spur track required the clearing of about 50 acres, and on the factory site there were two [130—19b] engines engaged in drawing and piling stumps preparatory to burning.”

So that there were two donkey engines instead of one. I did not know whether it was one or two, you recollect; those are the engines referred to this morning. (Reads:)

“It was estimated that this part of the work would be finished by October 1st, and then there may be a little grading to do, because after the trees and bushes are cut out, some surface inequalities will require to be levelled.”

Now, this is a copy of a letter from Mr. W. J. Dingee, to Mr. Howard dated Sept. 5th, 1907.

Q. How did they come into your possession, Mr. Evans?

A. Well, I presume I must have asked Mr. Howard some questions about the dilatory work, you know,



(Deposition of Ernest E. Evans.)

the work not being pushed. I don't know what the contents of this letter is; I have forgotten. (Reads:)

"In reply to your favor of the 14th relative to the Northwestern Portland Cement Company, will say that the plans are now completed, and have been sent to Dr. Bachman at Nazareth, Pa. I am advised by him that he is now receiving bids for the machinery, and has already let the contract to the Allis Chalmers Company, for the Ball and Tube Mills.

I start east on next Sunday, and will then take up the matter with Dr. Bachman of the letting of the contract for the foundation of the buildings, so that the foundations will be ready to receive the machinery as it arrives.

The people who have bought stock and bonds of this Company need have no misgivings as to our good faith in the matter. That plant will be built, but, on account of the extraordinary money stringency and the slacking up of orders, it has not been pushed as rapidly as it otherwise would have been."

I asked Mr. Howard to give an explanation as to why this [131—20] work had not been rushed as it was arranged to be so we could have the buildings under cover by the fall of 1907. So Mr. Howard wrote on to Mr. Dingee, and that is Mr. Dingee's reply apparently. Well, I did not consider that satisfactory, and I could not get any information, so I wrote to Mr. Dingee myself, and this is a copy of my letter to him, which is dated 20th December, 1907. (Reads:)



(Deposition of Ernest E. Evans.)

“W. J. Dingee, Esq.,

President of Northwestern Portland Cement Co..  
San Francisco.

Dear Sir:—

Last January I bought and paid for \$45,000 of 6% First mortgage bonds in the Northwestern Portland Cement Company \$15,000 of which were for personal friends of mine on the distinct understanding and assurance that all the capital necessary for the erection of the works, with a nominal daily capacity of 5,000 barrels of Portland cement, near Kendall, Wash., had been subscribed and paid in, and that the erection of the works would be commenced forthwith and rushed to completion, ready for work early in 1908.

From all the information I have been able to gather, I find that beyond clearing a few acres of land near Kendall, nothing had been done, and as payment for the coupons due on 1st ulto., has been refused even in clearing house certificates, on the plea of legal holidays, as President of the Company, I shall be much obliged if you will answer the following questions which have been put to me by my friends, who are apparently under the impression that I have misled them into what looks to them like a bad investment.

1. When is the first meeting of shareholders to take place, and where?

2. How many bonds have actually been sold and paid for in full?

3. Where are the proceeds from the sale of the

(Deposition of Ernest E. Evans.)

bonds sold [132—20a] deposited and on what terms.

4. How much money has actually been disbursed in connection with the clearing of the land, also in connection with the erection of the works, the understanding being that in consideration of certain ordinary shares, the promoters were to deed over to the N. W. P. C. Co. the real estate and the deposits of lime near Kendall.

In view of the delay in the construction of the N. W. P. C. Company's plant, and the actual completion of the Washington Portland Cement Company's plants near Baker, Wash.—it is all in that district—whose combined capacity will be more than sufficient for the Puget Sound and district markets, would it not be advisable in the interests of all concerned, to abandon the project for the time being, and return the bondholders their money?

Thanking you in anticipation."

I got no reply to that letter. I wrote Mr. Dingee again on the 6th of Jan., 1908. (Reads:)

"Dear Sir:—On the 20th ult. I wrote asking you for certain information in connection with the Northwestern Portland Cement Company, to which I have had no reply, and in case the letter has gone astray, I beg to enclose a copy, and shall be much obliged if you will kindly answer the questions contained therein."

I got no reply to that,—to the first or the second. I wrote to our postmaster in Vancouver as follows (reads):

(Deposition of Ernest E. Evans.)

“Vancouver, B. C. 29th January, 1908.

The Postmaster,

Vancouver,

Dear Sir: We registered a letter on 7th inst. addressed to W. J. Dingee, President of Northwestern Portland Cement Company, 430 California Street, San Francisco, and hold your receipt for same, which is numbered 196. We have had no acknowledgment of this letter, and shall be much obliged if you will kindly [133—20b] write to the authorities in San Francisco, and ask them whether the letter was delivered, when and who signed for it.

Thanking you in anticipation.”

I got statements from the authorities here addressed to the authorities in Vancouver. This is the first one (reads):

“Post Office, Vancouver, B. D. Feb. 1st, 1908.

Post Master, San Francisco, Cal. Registered letter referred to dispatched to San Francisco on the 8th Jan., 1908, bill #8 entry #17 under #196 and acknowledged.”

This is from San Francisco again (reads):

“Feb. 6th, 1908.

Post Master, Vancouver, B. D. Letter in question was delivered Jan. 14-08 to W. H. Cole for addressee under #54982.

“ARTHUR G. FISK, P. M.  
KROHN.”

(Deposition of Ernest E. Evans.)

Then the following (reads):

“Postoffice, Vancouver, B. D., Feb. 10, 1908.  
Messrs. Evans, Coleman & Evans, City.

Next attached a statement from the Post Master, San Francisco, to the effect that the letter in question delivered to W. H. Cole for the addressee on the 14th ult.”

That gave conclusive proof of the delivery of the letters to which I got no reply. I have not the least idea who Mr. Cole was. Then on the 17th of Jan., 1908, I wrote to Mr. John L. Howard. (Reads:)

“Your namesake”—that is, Mr. C. W. Howard, “at Bellingham, telephoned me yesterday morning, apparently in a great state of mind, stating that the men who had been working on the clearing, under Mr. Davis, the Engineer, and who were laid off two months ago, had not received their pay, and some of them were still on the property waiting for it, practically on the verge of starvation, and were proceeding to file liens.”

Q. Pardon me. The property there referred to is the property at Kendall, Washington? [134—21]

“A. Yes, a Mr. Davis was the engineer appointed by Dr. Bachman and Mr. Dingee. (Continues reading:) “He also informed me that several of the merchants in Bellingham, from whom goods had been purchased, had been interviewing both he and Mr. Purdy,”—Purdy is a banker up there, a kind of a father of Bellingham—“and they distinctly stated that unless they received settlement of their claims forthwith, legal proceedings would be commenced.

(Deposition of Ernest E. Evans.)

Mr. Howard claims that he has communicated with the company, who have not had the common decency to reply, and his object in telephoning me was to ascertain your whereabouts, thinking that if you were advised of the situation, you would see that matters were adjusted without delay, as of course he, Purdy, and others in Bellingham, are anxious to avoid publicity. I therefore wired you to this effect, and this morning have a telegram from Mr. Norcross stating that you would be in Portland all today, and that he had sent a copy of the telegram to Mr. Dingee, who states settlement will be made before the 15th, and I have so advised Mr. Howard.

For your guidance, I have not received any reply from Mr. Dingee to my letter of 20th ulto., and I have again written him, as per copy enclosed. I do not believe for a moment that he did not receive my letter, and I am most anxious to discuss this business with you, and shall be glad to know whether you propose returning home via Vancouver; if not, I will run over to Nanaimo one afternoon, which would be rather inconvenient just now, as Percy"—my brother—"will not be back until some time next week." There seems to be something missing here.

Q. Missing after the letter of January 7th?

A. You see, there is nothing here until the 28th of March, but there was some correspondence—(looks over papers)—no, it is not there. The next step that I took was to have some of my shares—as I could not get any information from Mr. Dingee—the [135—21a] next step I took was to transfer some



(Deposition of Ernest E. Evans.)

shares to Mr. Wenzelburger, and ask him to proceed to the office of the Company, and make an examination of the books, which he did.

Q. After January 7th, what is the next letter in that series?     A. In this series it is—

Q. (Intg.) You might as well exhaust that series, I think, Mr. Evans; there are not very many more?

A. The next letter is dated March 28th, because there was a good deal took place between that time and March 28th—there was this letter about appointing Mr. Wenzelburger, and then when I got his report I simply wrote and said that I would come to San Francisco as quickly as I could and consult with the other subscribers, which I did; and you know what happened. This is a letter dated 28th of March after I had gone back, after the arrangements had all been consummated. This was addressed by Mr. Howard to myself. (Reads:) “After the conference with some of the subscribers all bonds of the Northwestern Portland Cement Company”—Oh, I asked him to write me a letter, so I could send it on to this Mr. Rand and Mr. Warner, and the others who were interested, because I knew of the arrangement myself, since I made the arrangement myself.

Q. You made that request to Mr. Howard while you were in San Francisco?

A. Yes, to write me a letter so I could send on a copy of it, and this is what he wrote me (reads): “After conference with some of the subscribers of bonds of the Northwestern Portland Cement Company, I have arranged that the Standard Cement



(Deposition of Ernest E. Evans.)

Corporation will take up the bonds that were subscribed for through the writer, and that corporation will issue in payment its notes for the face value of the bonds, payable on or before one year with interest [136—21b] at six per cent payable semi-annually.

Will you, therefore, please send me your bonds and all the shares, and I will give you receipt therefor, until I deliver you the note as stated.

The Standard Portland Cement Corporation has authority by its Articles of Incorporation to buy and own securities in other corporations.

Its Board of Directors will authorize this step, and I shall be furnished with a certified copy of authority to purchase. Mr. W. J. Dingee will endorse these notes." Then I sent down the bonds, and I got an acknowledgment and a copy of the resolutions signed by Mr. Young.

Q. Pardon me a moment; what are these letters?

A. Dated the 13th of April, 1908, to John L. Howard, Esq. ( Reads:) "Enclosed we beg to hand you 10 bonds of \$1,000.00 each of Northwestern Portland Cement Company, numbered 128 to 137, inclusive. Kindly acknowledge receipt and oblige, Yours faithfully."

That is No. 1.

No. 2 is to Mr. Howard, dated 13th of April, 1908.

( Reads:) "Enclosed we beg to hand you 10 bonds of \$1,000 each of Northwestern Portland Cement Company, numbered 138 to 147, inclusive. Kindly acknowledge receipt and oblige."

(Deposition of Ernest E. Evans.)

Letter No. 3, same date, to Mr. Howard:

(Reads:) "Enclosed we beg to hand you 10 bonds of \$1,000 each of Northwestern Portland Cement Company, numbered 148 to 157, inclusive. Kindly acknowledge and oblige."

I sent those in separate envelopes. It was too big a package for one.

Letter No. 4, dated 13th of April, 1908, to Mr. Howard:

(Reads:) "Dear Sir: Enclosed we beg to hand you nine certificates [137—21c] covering 2,000 shares in the Northwestern Portland Cement Company, as follows:

No. 65 for 150 shares in name of Ernest E. Evans.

" 66 " 150 " " " " Do.

" 68 " 1000 " " " " Do.

" 69 " 150 " " " " Do.

" 160 " 30 " " " " Do.

" 179 " 50 " " " " Do.

" 180 " 70 " " " " Adam L. Russell.

" 188 " 250 " " " " John L. Howard,  
Trustee.

" 196 " 150 " " " " A. Wenzelburger.

Kindly acknowledge receipt and oblige."

The next thing on the file is the copy of this resolution dated the 5th of May, 1908, and signed by Mr. L. F. Young.

Q. We are familiar with that.

A. Then here is a letter dated the 6th of June, 1908, addressed to Evans Coleman & Evans from Mr. D. C. Norcross. (Reads:) "In one of your let-

(Deposition of Ernest E. Evans.)

ters enclosing us Northwestern Portland Cement Company securities, you asked us to see that the securities were transferred from the name of original holder in order to avoid stockholder's liability.

I have a letter from the Secretary of the corporation dated the 5th inst. notifying me that all of the shares which I delivered them had been transferred on the 25th of May."

Q. By whom was that letter signed?

A. By Mr. Norcross, the Secretary of the Western Fuel Company.

The next is not in the order it is dated, November 24th, 1906, copy of telegram from W. J. Dingee to John L. Howard. Of course, it did not pass through me, but Howard sent it on. (Reads:) "New York, November 24th, 1906. Doctor due Napa Tuesday night, contractor for Northwestern following; letting contracts during December.—W. J. Dingee."

That was in the early stage of the proceeding about pushing the work on. Then here is a copy of a letter to John L. Howard [138—22] from Mr. Dingee dated San Francisco, September 5th, 1907. (Reads:)

"In reply to your favor of the 4th inst. relative to the Northwestern Portland Cement Company, will say that the plans are now completed and have been sent to Dr. Bachman at Nazareth, Pa."—I think we have had this in here before—"I am advised by him that he is now receiving bids for the machinery, and has already let the contract to the Allis Chalmers Company for the Ball and Tube Mills.

(Deposition of Ernest E. Evans.)

I start east on next Sunday, and will then take up the matter with Dr. Bachman of the letting of the contracts for the foundations of the buildings, so that the foundations will be ready to receive the machinery as it arrives.

The people who have bought stock and bonds of this Company need have no misgivings as to our good faith in the matter. That plant will be built, but, on account of the extraordinary money stringency and the slacking up of orders, it has not been pushed as rapidly as it otherwise would have been."

Q. Mr. Howard forwarded that letter to you, did he?

A. To show that, in reply to my various requests urging the pushing of the work.

Q. Now, Mr. Evans, there are some few here which we overlooked this morning. I am going to ask you to read to the reporter #2, #3, #4, and #6.

A. This is dated Oakland, December 3d, 1906, copy of letter from John L. Howard to myself. (Reads:) "I saw Dr. Bachman to-day; he returned from the East on Tuesday night. There are three brothers, Stewart by name—who are constructing the works for his Atlantic Cement Co. in Penna. One of the brothers is on the way here, or is about to leave the East. He and Mr. Rosebery, the Supt. at Napa, will leave for Kendall, the one to locate the factory, the other to see what equipment may be needed for construction [139—23] purposes—I mean not the material, but the apparatus needed for erection, and this the Dr. says is even now being assembled by

(Deposition of Ernest E. Evans.)

Stewart Bros. in Penna. He is greatly pleased with speed and character of their work, and he wants to make the dirt fly.

I have explained to him all the trials and tribulations we endured in connection with this land matter, and he understands it.

Bachman's new deed to the Cement Co. covers the Watson and Zender tracts, and while it purposely omits the Riedle claims, he will convey this land as soon as he obtains title. The deed of trust from the Cement Co. likewise omits the Riedle claims, but covers all property that may hereafter be acquired, so that as soon as Bachman obtains title and conveys it, the Riedle claims will come under the mtge.

This clears the way for the flotation of the Co. and the issuance of bonds and shares, but no steps have as yet been taken."

The next one is #3, extract of letter sent by John L. Howard to E. E. Evans, dated San Francisco, December 10th, 1906. (Reads:) "I saw Dr. Bachman on Saturday and learned among other things in brief that the Atlantic Cement Factory in Pennsylvania 'would be a winner.'

That he and Dingee had secured control of the Northampton Mill adjoining it, which I saw"—the first I have heard about Atlantic or Northampton—"that Santa Cruz would not ship commercial cement until March, because they are awaiting stuff that has been three months on the rails. The kilns, roasters and mills on the 'raw side' are in place, and could be started at once but for the absence of a few fittings



(Deposition of Ernest E. Evans.)

and the lack of a few additional cement millwrights to put on finishing touches.

His intention is to start this as soon as practicable and accumulate a large quantity of Klinker that it may 'age' before being ground. [140—24]

In my own mind I have fixed April 1st as the date of beginning. I have had no word from Randolph about Gregory's appeal. Bachman is still daily expecting a wire that the contractor Stewart has started for San Francisco to join Rosebery and go to Kendall. A 5,000-barrel plant such as they propose is an *immense* thing, as I hear from those who have seen Santa Cruz.

He mentioned during the conversation that he would have to get some N. W. Cement Company's bonds to make delivery to the subscribers for \$150,000 at Napa, as he would soon begin to need money. Some subscriptions have already been handed to me. What is your present mind?"

Then this is #4, extract of letter from E. E. Evans to John L. Howard, dated Vancouver, B. C., 19th December, 1906. (Reads:)

"Thanks for yours of 10th inst. with information as to the Atlantic and Santa Cruz Companies, from which I am glad to see that you are likely to make a nice profit out of your investments in those concerns.

In reply to your inquiry as to what my present mind is with regard to taking bonds, my firm's intention right along has been, and still is, to invest \$45,000 (say \$15,000 each) on the basis of two to one, but before finally committing ourselves, I think some

(Deposition of Ernest E. Evans.)

definite information should be given or a prospectus issued as to what the programme is, and what we are subscribing to. For instance, we should know the total nominal capitalization, the amount of cash required (making ample allowance for contingencies), for the erection of the works and working capital, whether all said money required will be forthcoming from underwriters, etc.

I would also like to know, assuming that \$1,200,000 is required, and the nominal capitalization of the company is \$2,000,000 in bonds, and \$5,000,000 in shares, will \$800,000 in shares remain in the Treasury with the \$800,000 unissued bonds, to assist in selling [141—24a] these should more money be required later, or will the promoters take the whole of the ordinary shares with the first issue.”

What I was afraid of was that these people in floating the first lot of bonds would issue this stock one for one as bonus, and then they would leave \$800,000 bonds in the treasury and pocket the balance of the directors' stock. That was the reason I asked those questions.

Q. #6.—Would you mind reading that please?

A. Extract from letter sent to E. E. Evans by John L. Howard, dated San Francisco, January 4th, 1907 (reads):

“I saw Dr. Bachman yesterday. He starts East on January 10th.

Stewart, the constructing contractor, will await his arrival there, and then come west. Meantime, he is shipping material by rail. He will go north with

(Deposition of Ernest E. Evans.)

Rosebery, Superintendent of Napa Factory.

The option on the B. B. and B. C. R. R. shares expires on Saturday and they are arranging to take them up."

Q. That letter dated December 20th, 1907, you tell Mr. W. J. Dingee that in January, 1907, you bought and paid for \$45,000.00 worth of 6% first mortgage bonds in the Northwestern [142—24b] Portland Cement Company, \$15,000.00 of which were for personal friends of yours, on the distinct understanding and assurance that all the capital necessary for the erection of the works, with a normal daily capacity of 5,000 barrels of Portland Cement near Kendall, had been subscribed and paid in, and that the erection of the works would be commenced forthwith and rushed to completion, ready for work early in 1908; I ask you, with whom did you have the distinct understanding and assurance referred to in this passage from this letter which I have just quoted to you?

Q. Well, you will have seen from the correspondence that I have just read that all of my correspondence was done through Mr. Howard who got the assurance from Mr. Dingee: you will see from Mr. Howard's letter to me that Mr. Dingee told him so and so.

Q. I had noticed also that Mr. Howard has said certain things to you in his letters to you: did you derive this distinct understanding and assurance from both of these gentlemen?

A. Well, probably I put it too strong there. But I considered that when Mr. Howard said that he

(Deposition of Ernest E. Evans.)

would look after my interests as if they were his own, and that when I had asked these questions, and I made it a condition before I put up my subscription, as you will see from there, that this money was going to be actually forthcoming.

Q. It never was actually forthcoming so far as you know?

A. Well, I did not find that out, Mr. Dunne, until I got Mr. Wenzelburger's report.

Q. In this same letter you ask Mr. Dingee, "When is the first meeting of shareholders to take place, and where?" Was there a meeting of shareholders of the Northwestern [143—25] Portland Cement Company?

A. I never received any notice. The reason I asked that was because, according to our company law, a meeting is to be held within four months after the formation of the Company—a meeting of shareholders. By our law, I refer to the Canadian, British Columbia law; as a matter of fact, I do not know that any such meeting was ever held.

In these matters, I was acting for the firm of Evans, Coleman & Evans, and also for the personal friends of mine whom I mentioned in this letter of December 20th, 1907. I will give you their names, if you want; one was Mr. C. D. Rand of Vancouver: another was Mr. E. H. Warner, I think he is of Quornhall Loughborough, Leicestershire; and another one, Mr. W. P. Warner, of Langton Hall, Market Harbrough in Leicestershire. Mr. E. H. Warner was the master of the hounds. These gentle-

(Deposition of Ernest E. Evans.)

men, all bondholders, they took \$5,000.00 apiece, but Messrs. Warner's bonds were never redeemed for the simple reason that we had to get them from England, by the time they arrived back here Dr. Bachman had gone east and the note was sent east for his indorsation, and he lost it, and the consequence is we still held the bonds.

Q. I observe in your letter January 7th, 1908, addressed by you to John L. Howard, that you state "Your namesake at Bellingham telephoned me yesterday morning apparently in a great state of mind, stating that the men who had been working on the clearing, under Mr. Davis, the engineer, and who were laid off two months ago, had not received their pay, and some of them were still on the property waiting for it, practically on the verge of starvation and were proceeding to file liens"; you have told us that the gentleman referred to here by the phrase "your namesake" was a Mr. Howard and an [144—26] attorney at law in Vancouver, Mr. Evans?

A. No, in Bellingham, of Newman & Howard. The property referred to here was the property at Kendall where the Northwestern Portland Cement Company was supposed to establish its plant.

Q. Now, bearing those facts in mind, I ask you how it came about that Mr. Howard, Mr. J. L. Howard's namesake at Bellingham, should apply to you in the matter of those men and the absence of their pay, the fact that they were on the verge of starvation, and were proceeding to file liens, etc.?

A. For the reason that I was interested in a prop-



(Deposition of Ernest E. Evans.)

erty up there long before I got connected with this one and I had had a good deal to do with Mr. C. W. Howard whom I knew personally, and Mr. C. W. Howard and Mr. Purdy, the banker were keenly interested in Bellingham and they thought the establishment of these cement works at Kendall was going to be a very great assistance to the support of the town of Bellingham; and I believe that at first several of the bills in connection with the preliminary work were paid through—that Mr. Dingee had remitted the money to Newman & Howard to disburse and he, Mr. C. W. Howard, knowing that I had been there with Mr. John L. Howard at Bellingham, and knowing one another pretty well, he telegraphed me, he said “just for your information,” as he knew I had subscribed a considerable amount of money; naturally, whenever I met him we would say, “Well, what are you doing about these cement works?” Well, of course, you (referring to Mr. Dunne) see all the excuses that were given us about the works not being started, etc., or that they were always going to do something.

Q. But never did it?

A. Never did much. It was in that way that Mr. [145—27] Howard of Bellingham telephoned to me, and of course I was getting anxious. I was anxious to get the work started seeing that the winter was coming on.

Q. Now, Mr. Evans, I observe here in this series of letters a letter dated January 7th, 1908, addressed to Mr. John L. Howard by yourself; following that,

(Deposition of Ernest E. Evans.)

the next letter in this series is a letter addressed by John L. Howard to yourself dated March 28th, 1908; during the period of time which intervened between January 7th, 1908, and March 28th, 1908, was there any correspondence between yourself and Mr. Howard?

A. Yes. Will you let me have your file again to refresh my memory?

Q. Yes.

A. (Referring to file of letters.) The reason there was this gap was, you will see, from this letter that Mr. Howard was on his way up north, you see. It says here "I therefore wired you to this effect, and this morning have a telegram from Mr. Norcross stating that you would be in Portland to-day." He was on his way north to pay one of these periodical visits to the mine, and also to visit Kendall and the consequence was that I met him; and that accounts for the lack of correspondence. I am not sure where I met him. I am practically sure it must have been at Vancouver, as he usually went from Seattle to Victoria, then up to Nanaimo, then he would come over from Nanaimo in the morning, arriving at Vancouver at half-past 10, and catching the 4 o'clock train to Bellingham, and we would usually spend an hour or two together; he would lunch with me; I am practically sure that was the programme. I recall meeting him in the early part of January, 1908, at one of these places. I could not say which, but I am practically sure it was Vancouver. I had a conversation with him concerning the

(Deposition of Ernest E. Evans.)

affairs which we have been talking of to-day. [146—28] I told him when I got this intimation, that these accounts had not been paid; I feared that everything was not as it should be—referring to the intimation I got from the other Mr. Howard from Bellingham; seeing that this money—for instance, this letter was dated the 7th of January, and the money to pay these wages was not forthcoming until the 15th of January, I thought—I had some suspicions that the money was not available; of course, I was under the impression that \$700,000.00 had actually been put up on the sale of bonds, and as I knew that practically only a little more than \$20,000.00 had been actually expended there should have been, of course, a lot of money left; and I thought that this money was tied up in the panic, or something of that sort, which occurred in October. Well, as the result of that interview during which Mr. Howard told me that any shareholder in a corporation in the State of California could examine the books of the company, I said that “I think that we should have an investigation”; and he said, “I think that we should.” I said, “Can you suggest anybody to me?” So he suggested this Mr. Wenzelburger. At his suggestion, I transferred a certain number of shares to Mr. Wenzelburger, and instructed him to proceed—I could not tell you the dates, you know—I told him to proceed and make the examination and make a report to me.

Q. I will exhibit to you, Mr. Evans, this certificate #64. Do you recognize your signature to the

(Deposition of Ernest E. Evans.)

stock of the Northwestern Portland Cement Company as the same appears attached and cancelled in the stock-book? (Showing.)

A. Yes, that is my signature. I identify this as the certificate which I transferred to Mr. Wenzelburger for purposes of investigation, as I have described them. The only way I can identify it is by my signature. There is no question at all about my signature; therefore, I presume that the [147—29] certificate must be all right. There were 150 shares. 196 was for 150 shares as shown by this letter. Mr. Wenzelburger's certificate was 196 when that was registered in his name.

Mr. DUNNE.—No. 64, Mr. Reporter, being Certificate No. 64, for 150 shares of the capital stock of the Northwestern Portland Cement Company, the date of the certificate being January 18th, 1907, certifying that Ernest E. Evans is the owner of 150 shares of the fully paid-up capital stock of the corporation mentioned, signed Wm. J. Dingee, President, Frank A. Losch, secretary, with the seal of the corporation attached, and endorsed, "Ernest E. Evans," "Witness A. Lothian Russell."

Q. That certificate you identify, Mr. Evans?

A. Yes.

Mr. DUNNE.—In connection with this, I offer to read into the evidence and into the Reporter's notes, Certificate No. 196, while on this subject. That certificate is in similar form to the other. The number is 196, the amount of shares 150, the date February 10th, 1908. It certifies that A. Wenzelburger is the

owner of 150 shares of the fully paid-up stock of the corporation mentioned. It is signed by Edward McCary, vice-president, and Walter H. Cole, assistant secretary. The stub shows that this certificate was issued for number 64, from Ernest E. Evans to A. Wenzelburger. Below this, the following receipt: "Received the above certificate subject to the Articles of Incorporation, and Bu-laws of the company. A. Wenzelburger." The certificate itself, No. 196, is endorsed: "For value received, I hereby assign the within certificate to the Standard Portland Cement Corporation. A. Wenzelburger." Sig. "O. K. D. C. Norcross."

Further endorsed: "Transferred to L. F. Young, Secretary Standard Portland Cement Co. by L. F. Young, secretary."

Mr. OLNEY.—With the cancellation on the front of it.

Mr. DUNNE.—And, while on this subject, I will state [148—30] that on the stub of certificate No. 64 appears the following entry: "Date issued, January 18, 1907, issued for, 63: from Frank A. Losch, trustee to Ernest E. Evans, Vancouver, B. C."; and on the face of the certificate No. 64 appears the following "Cancelled February 10, 1908"—I think it is; it looks like it—by issue of certificate No. 196. Walter H. Cole, A. Secretary."

Mr. PRINGLE.—What was the date of that cancellation?

Mr. DUNNE.—February 10th, it looks like 1908, to me.



(Deposition of Ernest E. Evans.)

Mr. PRINGLE.—It must be, because 196 is 1908, you see.

Mr. DUNNE.—And No. 196 bears upon its face: “Cancelled May 25th, by issue of Certificate No. 200, L. F. Young.”

Q. What further conversation did you have with Mr. Howard on this occasion?

A. I told you that he suggested that I should appoint this Mr. Wenzelburger. There was virtually no other conversation. I appointed Mr. Wenzelburger and I received his report about the end of February; it is dated—I have it here before me—February 27th, 1908. At this meeting that I had with Mr. Howard there was no discussion between me and him concerning the affairs of the Northwestern company. He didn’t know anything at all, and of course he was awfully surprised when he got this—when he heard that this money—that these wages had not been paid. I could not tell you how he expressed his surprise; he was very much surprised. That was all the conversation I had on this occasion. After that I wrote—I wrote Mr. Wenzelburger enclosing him this certificate, and having instructed—I think I did probably—to save time, I instructed Mr. Norcross of the Western Fuel Co.—of course, we were very closely associated, being agents—to hand over this certificate, and I think I had previously written Mr. Wenzelburger what I wanted. I have not any of these letters with me now. I could not tell you whether they are in existence. If anywhere, they are at [149—30a] Vancouver. Mind you, I

(Deposition of Ernest E. Evans.)

am not positive on that point at all. I have Mr. Wenzelburger's report here (witness produces report); that is the only one that I have.

Mr. DUNNE.—I will offer in evidence the report of Mr. Wenzelburger referred to in the testimony of the witness, dated "San Francisco, California, February 27, 1908," and indorsed "Northwestern Portland Cement Company, report by A. Wenzelburger, certified public accountant"; it being the understanding that the copy made by Mr. Potter (the reporter of said deposition) may stand as and for the original.

Mr. OLNEY.—Very well.

#### EXHIBIT "A."

San Francisco, California, February 27, 1908.

Ernest E. Evans, Esq.,

Vancouver, B. C.

Dear Sir:

Obedient to your request to obtain certain information from the Northwestern Portland Cement Company, and more particularly described in memorandum furnished to me, copy of which is attached hereto, I beg leave to submit the following report:

Owing to the fact that the Secretary of the above-named corporation also holds the secretaryship of other numerous companies represented in the same office, and as such is obliged to attend meetings and hold consultations, it was a difficult matter to get audience; however, I succeeded in getting all the information desired, all the books having been sub-

mitted to me for inspection.

My first work was to examine the By-laws and the Record-book containing the minutes of the meeting. I have taken a synopsis of both and contents of this synopsis answers questions, 1, 2, [150—31] 3, 4, 5, in full and partly questions 10 and 12 and are attached hereto. See Folio 2, 3, 4, 5, and 6.

After exhausting the By-laws and Record-book, I examined the Stock Certificate Book, Stock Journal and Stock Ledger of which I attach full details showing issue of all stock by names and certificate numbers, to whom transferred, the number of shares in force, and finally a complete Stock Trial Balance, all of which I found to be in perfect order. Full detail of this work is to be found in Folios #7 to 12 and complies with instructions #13. This left only the books of accounts to be looked into, viz.:

Cash Book, Journal and Ledger. A synopsis of these is contained in Trial Balance (Folio 13) which I will now comment upon seriatim.

### DEBIT ITEMS.

1. W. J. Dingee. Debit Balance. . . . \$9486.07

This is an open account and practically a bank account. Mr. Dingee receiving and paying monies as requires.

2. Irving A. Bachman. Debit Balance 5000.00

Due for bonds held by company as collateral.

3. Edward McGary. Debit Balance. 2000.00

Due for bonds held by the company as collateral.

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4.	Property account. Debit balance. \$5030825.00	
	Of this account \$4999500 represents lands bought from Irving A. Bachman for which he received same amount of the corporation stock; the remainder represents other expenditures made [151—31a] under this head.	
5.	Coupon interest .....	14220.00
	Bond interest paid on \$295000 bonds.	
6.	Mill Expense .....	996.13
7.	Expense .....	3167.69
8.	Machinery....	2473.54
9.	Construction.... Self-	11521.95
10.	“ Bldg....explanatory	7106.88
11.	“ R. R....	7452.04
12.	Engineering .....	244.38
13.	C. W. Howard, Agt...	500.00
14.	Standard Portland Cement Company.....	7150.00
15.	Santa Cruz Portland Cement Company .....	105168.33
	Represent payment for rails	
	Items 14 and 15 represent loans to these companies on open book account. The minutes do not show any authorization for these loans.	
16.	E. W. Churchill.....	4000.00
	Company as collateral.	
17.	Bellingham Bay & B. C. R. R. Co..	\$10855.95
	Balance due on Bonds held by the	

bought of this company for use in the building of the company's R. R.

19.	Cash.....	12.20
	Cash in office.	
	Credit items.	
20.	Capital stock.....	5000000.00
	Self-explanatory.	
21.	Bonds.....	295000.00
	Sale of 295 bonds leaving of the 400 delivered by the Trust Company still 105 on hand and now in the vaults of the [152—31b] company.	
22.	Interest.....	2233.42
	Represent Bond Interest accrued on Bonds at time of sale.	
23—30.	Sundry credit items represents amounts due for Merchandise bought such as Lumber, Hardware, Machinery, Powder, etc., etc.	
31.	Billingham Bay & B. C. R. R. Co..	1239.05
	Amount due for freight.	
32.	Santa Cruz Lime Company.....	4000.00
33.	Atlantic Portland Cement Company.....	7500.00
	These last two items are open book accounts and represent cash borrowed from these Companies.	

This completes the financial history of the corporation. I have not called for any vouchers to substantiate



I have not called for any vouchers to substitute the various expenditures, but I dare say I am morally convinced of their correctness.

While the Secretary did not question my right to inspect the books, he seemed to be in doubt as to my right to make a complete abstract from them, however, on my assurance not to abuse this privilege, I managed to obtain the foregoing information which practically includes every transaction had since the organization of the Company.

Should you desire any further information on any particular point, I should be pleased to endeavor to comply with your request.

In conversation with the Secretary Mr. Young, and Dr. Bachman, I learned that the only reason for not going ahead with the building of the works, is owing to the prevailing financial condition, and that their expectations as regards final results [153—31c] are as hopeful as ever.

Respectfully yours,

(Signed) A. WENZELBURGER,

Certified Public Accountant.

Q. Did Mr. Wenzelburger forward this report directly to you, Mr. Evans?

A. I am not sure whether it was sent direct to me or whether it came through the Western Fuel Company. I have an idea that it came through the Western Fuel Company. Because I had never met Mr. Wenzelburger, and I got his name from them and I asked them to employ him, and, of course, I guaranteed the expense. In reply as to when I re-

(Deposition of Ernest E. Evans.)

ceived it I received it within—of course, it was sent up to me immediately—within three days after its date. I then made arrangements to leave Vancouver as soon as I could for San Francisco. Now, the exact date I could not tell you, but I came down to San Francisco. When I reached here, I made an informal call on Mr. John L. Howard, and I told him that I was surprised at the contents of the report, and he said, “Well, so am I.” I had met a Mr. Sidney Smith of San Francisco; he at that time was a director of the Western Fuel Company. He was also a subscriber through Mr. Howard to some of these bonds, and, having a high opinion of Mr. Smith, I immediately went over to consult him—Mr. Howard was busy—in his office in the Merchants’ Exchange Bldg. and we arranged that we should get hold of Mr. G. W. Spencer, who has since died. I don’t know if you know him. He used to be with Mr. Boardman of the Aetna Insurance Company. He was also [154—31d] a subscriber, and we went to Mr. Howard’s office. There we discussed the thing, and we asked Mr. Howard—we came to the conclusion that, as Mr. Howard was—at least, I have never met Mr. Dingee, but as Mr. Howard had a good many dealings with him in connection with the selling of the cement, and as we made our subscription to these bonds through him, we thought that he was the right man to see Mr. Dingee—to see what they proposed doing about continuing the works, or redeeming the bonds. He went over to see Mr. Dingee.

(Deposition of Ernest E. Evans.)

He was not absent very long. I think that we adjourned until the afternoon. Well, anyhow he came back and said that he had seen Mr. Dingee, and Mr. Dingee had told him that nobody had ever lost any money through him, that they intended going on with the works but that it was not advisable in view of the financial situation to press the construction now, but he said, "If your friends are uneasy, I will arrange to buy these bonds back," so he said, "I cannot pay for them myself, but I can arrange either with the Standard Portland Cement Company to buy them or the Santa Cruz." So Mr. Howard came over with that report and I said, "Well, that seems to be fair, but of the two companies I would prefer the Standard, for this reason, that I knew that they had redeemed some of their bonds, that according to this Mr. Wenzelburger's report the Santa Cruz Company was indebted to the Northwestern Portland Cement Company," so I said, "Provided that it is a legal transaction that they have a power to buy these bonds, I was quite willing to agree to their proposition," which was that they would give us a note dated the first of May, bearing interest at the rate of 6% per year.

Q. Who are "they"?

A. The Standard Portland Cement Corporation. I was informed that a Mr. McEnerney—I never knew him, or hadn't heard of him before—had told Mr. Dingee that it was perfectly [155—32] legal transaction, and we arranged that Mr. Sidney Smith

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was to get the articles of association and pass his opinion on it. Mr. Smith got the articles and he read them over, and he said, "They are authorized to do this." "Well," I said, "then we must be sure, now, that you say they have the power, that a directors' meeting is duly called in accordance with the articles of association to authorize this transaction, and that we must get a stamped copy of the resolutions," all of which was done, and finally, when it was done, we handed over our bonds; but before agreeing to the proposition I took advice and I was informed on all sides that they had the power to do it. I did this because I had been mixed up with companies in our place, and I know you have got to have special resolutions for all these different propositions. I understand that Mr. Dingee told Mr. Howard as to Mr. McEnerney's opinion, and Mr. Howard told us at the meeting. However, I was not satisfied with that. I wanted Mr. Smith to look into the articles himself.

When Mr. Howard first approached Mr. Dingee on this proposition, Mr. Dingee said they intended to go on with this proposition, that it was a part of their scheme, the controlling of the cement industry of the Coast, but it was not advisable to push on now on account of the slackness in trade and a stringency in the money market, and he said, "Well, if your friends are nervous I will arrange to retire the bonds." Nothing that I am aware of was said about any offer by Mr. Dingee personally to take up these bonds, because I knew pretty well at that time that

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Mr. Dingee was not in a position to take up the bonds himself, because it was common report that he was pretty well tied up to the Crocker Bank.

Q. Was anything said about any proposal by Mr. Dingee and Mr. Bachman to issue a note to take up these bonds? [156—33]

A. I insisted also that the notes be indorsed by Mr. Dingee. I never mentioned anything about Mr. Bachman, but, anyhow, when I got the note it was indorsed both by Dingee and Bachman. I do not recollect that, at any time during these negotiations, anything was said about Mr. Dingee and Mr. Bachman, or either of them, issuing a note indorsed by the Standard Portland Cement Corporation. It was a straight note; the proposition was a straight note from the Standard Portland Cement Corporation, or, at our option, the Santa Cruz, and we chose the Standard.

Q. That was the ultimate shape the arrangement took?

A. There was only one interview between Mr. Howard and Mr. Dingee. He came back with this proposition. I suggested the indorsement of the notes, and my suggestion was limited to Mr. Dingee, but when I received the note, I found Mr. Bachman's indorsement upon it. Of course, I was pleased when I got that. When the resolutions, and all this, that and the other, had been passed, we sent down our bonds and our certificates. At the time of that meeting I could not tell you whether I had left for Van-



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couver or not. I know that I was not present at the meeting of the Standard Corporation. I had never seen Mr. Dingee. I could not tell you how long I remained in San Francisco on this visit. I suppose I was here, not exactly on that visit, because during the visit I made a visit to the Santa Cruz plant to see that. I had never seen a big cement plant before. I went down there, and Mr. Howard and Sidney Smith went with me. I think I was down here altogether for a fortnight and I spent three or four days at Del Monte. I was about a fortnight in the State of California and then returned to Vancouver.

I have not taken any steps of any kind against the Northwestern Portland Cement Company itself, because when I received the report, as I told you, I thought it was advisable [157—34] to come down here and consult both Mr. Sidney Smith and Mr. Howard as to what was the best to be done; and the result of that took the shape of these notes—the notes of another corporation, the Standard Portland.

Q. What I am asking you now is, why you did not prosecute your rights as against the Northwestern rather than come down here to negotiate these notes.

A. To prosecute our rights against the Northwestern?

Q. Yes.

A. Well, I think that we—we discussed that, and we came to the conclusion that the best thing was to see Mr. Dingee and see whether he intended to go on with the scheme; and he assured Mr. Howard that it was his intention to go on with it when the clouds

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rolled by. I did not accept that assurance. Then, at that interview, he said, "If your friends are nervous, well, I can arrange to retire these bonds."

Q. In point of fact, you knew that the Northwestern was not a going concern?

A. When I got that report I did. I knew that they had abandoned the thing on account of financial stringency for the time being.

Q. You did not agree to retain these bonds?

A. No. What I looked at was this, that they had missed their opportunity to a certain extent; of course, I was wrong as the country has developed so much more since then; but at that particular time, owing to the delay in construction of the Northwestern Cement Works, larger works had been built in the meantime, and consequently when they started them they would have to face competition and to me at that time the proposition did not look as good as in the first instance from a purely commercial standpoint. [158—35]

There is no question at all but I understood the proposition of the bond issue of the Northwestern company to be to put up works there with a capacity of 5,000 barrels a day. I did not learn what became of the proceeds of the bond issue until I got that report; but when I got that report, I saw then that only a little of the proceeds of that bond issue had been employed in the development of the Northwestern company—I mean to say, the bulk of it had not been. Under these circumstances, I felt that it was best for me to get rid of those bonds. I considered that it

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was not right that this Northwestern Portland Cement Company should be a loaning institution, which it virtually was—that I subscribed my money for legitimate commercial purposes. Knowing what I did about the history of the Northwestern and having in my mind the contents of Mr. Wenzelburger's report, I would not have accepted a note on the Northwestern company in exchange for my bonds. I should have been giving up my security for nothing. I should have been giving up my security for their note. I thought that the bonds were worth more than their note. I could not tell you whether those bonds were listed. They had a market value, because they had assets behind them; they had the assets of a certain number of shares in the Bellingham Bay and British Columbia Railway; the Santa Cruz Portland Cement Company owed them considerable amount of money which I considered good, and there were other assets there which were liquid. The property was worth something. The machinery was worth something. Those donkey engines were worth something. In fact, I think I roughly figured it out that the property—the stuff was worth—I mean to sell it off and liquidate the thing would have brought about probably \$240,000 to \$250,000.

I knew that there was to be a meeting of the directors of the Standard Portland Cement Company; that was the understanding [159—36] from Mr. Howard—well, at least, as I told you, I asked Mr. Sidney Smith to examine these articles of association to find out whether they had the power to enter into a transaction of this sort and his opinion confirmed

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the opinion which I understood Mr. McEnerney gave to Mr. Dingee. Then I said, "All right; see that a meeting of the directors is called strictly in accordance with the articles of association, and that we get a stamped copy of the resolution that was passed"; and I understood that everything was done to conform to the law.

Q. You understood that from Mr. Howard?

A. Oh, well, I mean to say I got a copy of the resolutions; of course, I was not at the meeting; naturally I was not there.

Q. After you returned to Vancouver was there any correspondence between you and Mr. Howard?

A. No, I simply returned the—sent down the bonds, and the shares to them, and got his acknowledgment. That was all there was to it until the note came due on the first of May, 1909. Oh, yes, the interest, I think, was to be paid half yearly. Of course, we made formal application for the interest, but we did not get it; and I think I asked Mr. Howard whether we could take any steps till the note came due—which we could not. When the note came due, I told him that we wanted him to place the matter in the hands of some solicitors for collections. At the times of these transactions, at the time of the meeting of the directors of the Standard Portland Cement Company, Mr. Howard was absolutely not connected in any way with that Company except as sales agent for their product; he was not an officer or director of that corporation. I don't think I have any other correspondence except that I have pro-

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duced here dealing on this matter; it is such a long time ago, and I have been a pretty busy man. I don't think I have. I [160—37] don't think there would be any more at Vancouver, bearing on this thing, because I had all the material points all copied out. I brought with me all bearing on the matter at the request of Mr. Olney.

Mr. DUNNE.—(To Mr. OLNEY.) Would it be satisfactory to make any motion we might be advised to make to strike out, at the end of the direct examination of Mr. Evans?

Mr. OLNEY.—Oh, yes.

Mr. DUNNE.—All right.

The Witness continuing: My firm actually took 45 bonds. As to the bonds we personally took, Mr. Coleman, my brother and myself were equal partners. We took \$30,000.00, which would be 10 bonds each, making 30 bonds. Of the other 15 bonds, 5 bonds were handed to Mr. Rand, which were handed back, and the other ten bonds were sent over, 5 to Mr. W. P. Warner, and 5 to Mr. E. H. Warner, of England. I presume that Messrs. Stockett and Graham got their bonds through Mr. Howard. I am practically sure of that from what Mr. Stockett told me. I did not know this of my own knowledge. I did not know till some time after that Mr. Stockett and Mr. Graham had some. I am not positive about how many shares of stock our firm got with these 30 bonds; yes, we got for every thousand of bonds a \$1,000.00 in ordinary shares, which would be 10 shares of stock to the bond—\$100.00 shares. We



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were entitled to 300 shares of bonus stock on our 30 bonds—they were the terms of the subscription—that is right. The number of shares of stock which we actually received was 2,000 shares. I must have had these because these were returned, you see (reading): “Enclosed we beg to hand you 9 certificates covering 2,000 shares of the Northwestern Portland Cement Company.”

Q. What letter are you referring to now?

A. I am referring to the letter dated 3d of April, [161—38] 1908, marked #4, when we returned the bonds and the shares. That is a letter addressed to Mr. Howard in the name of the firm dictated by me. The facts that refer to the receipt by me of these 2,000 shares of stock are that in the first place, Mr. Howard told me that he should get two to one; that was the original scheme of floatation—two shares for every bond—I mean twenty shares for every bond; that is right. Then Mr. Howard told me that I was entitled to some remuneration or commission for introducing the property and that I was to get some commission which was never definitely stated.

Q. Was this a recompense for the introduction of the property and your visit to Kendall?

A. Well, it was for—just like a real estate agent, you might say, introducing a property.

Q. Introducing the property to whom?

A. Well, to Mr. Howard for Mr. Dingee.

Q. When you refer to the introducing of the property to Mr. Howard for Mr. Dingee, have you in mind

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the occasion when you and Dr. Bachman went to Kendall?

A. When Dr. Bachman and I went to Kendall, this was afterwards. As I told you yesterday, after my visit to San Francisco, when Mr. Dingee could not come to terms with Balfour Guthrie & Co. for their property, he sent agents into the field to look for a property. My visit to Kendall was in 1906.

I did not return any of this bonus stock to Mr. Dingee personally. I sent it on down with the bonds—everything.

Q. I will exhibit to you certificate #65 for 150 shares, and ask you if you recognize your signature on the back thereof? (Showing.)

A. Yes, that is my signature. That is not my writing (indicating). [162—39]

Q. Above it. Do you know whose handwriting that is above it?

A. No, I could not tell you; that is my handwriting (indicating), and that is my handwriting (indicating). I simply indorsed in blank. I don't know about Mr. Wenzelburger's. The indorsements on #165 read: "Transfer to the order of William J. Dingee. Ernest E. Evans. April 11th, 1908." And below that again a further indorsement: "Transfer to L. F. Young, trustee. William J. Dingee, by L. F. Young, as attorney in fact." The only portion of that indorsement which I wrote was my signature and the date, and the reason I put the date in was because I was nervous about the liability under the laws of California, and I simply put the date to show the

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date I transferred. Certificate #166 for 150 shares and the indorsement on its back are just the same; the signature and the date are in my handwriting. The indorsement reads: "Transfer to the order of William J. Dingee. Ernest E. Evans. 11th April, 1908." A further indorsement: "Transfer to L. F. Young, trustee. William J. Dingee, by L. F. Young as attorney in fact." I indorsed this simply in blank.

So far as certificate #68 for 1,000 shares, and the indorsement on the back thereof, are concerned, the signature and the date are in my handwriting. The indorsements read as follows: "Transfer to the order of William J. Dingee. Ernest E. Evans. 11th April, 1908." A further indorsement: "Transfer to L. F. Young, trustee. William H. Dingee by L. F. Young, as attorney in fact." The indorsement on this certificate #68 was likewise in blank when it left my hands.

My former answers as to #68 are equally applicable to certificate #69 for 150 shares. The indorsements are as follows: "Transfer to the order of William J. Dingee. Ernest E. Evans. 11th April, 1908." A further indorsement: [163—40] "Transfer to L. F. Young, trustee. William J. Dingee, by L. F. Young, as attorney in fact." When this certificate left me it was indorsed merely in blank.

The sole indorsement on the back of certificate #70 consists of my signature; in other words, it is an indorsement in blank.

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The indorsements on the back of certificate #71 for 150 shares is in my own handwriting. The sole indorsement on the back of certificate #71 consists of my signature; in other words, I indorsed it in blank.

As to the indorsements on the back of certificate #159 for 70 shares, the whole of that is in my own handwriting except "Witness: Jean Heughen," and she was a witness to my signature. There are no other indorsements on the back of certificate #159 except the following, "For value received, I hereby transfer the within 70 shares to Adam L. Russell, 1320 Harwood Street, Vancouver, B. C. Ernest E. Evans, Vancouver, B. C., 4th May, 1907. Witness: Jean Heughen." These constitute the entire and sole indorsements on the back of certificate #159.

As to the indorsements on the back of certificate #160, for 30 shares, the signature, my name, and the date, are in my handwriting. These indorsements read thus, "For value received, I hereby assign the within certificate to the Standard Portland Cement Corporation. Ernest E. Evans. 11th April, 1908"; then below that, the abbreviation: "Sig. O. K. D. C. Norcross"; a further indorsement, "Transfer to L. F. Young, Secretary. Standard Portland Cement Corporation, by L. F. Young, Secretary." I indorsed this in blank as I did the others.

As to the indorsements on the back of the certificate [164—41] #179 for 50 shares, the date and my own name are all that is in my handwriting; these indorsements read as follows: "For value received,

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I hereby assign the within certificate to the Standard Portland Cement Corporation. Ernest E. Evans. 11th April, 1908." "Sig. O. K. D. C. Norcross." "Transfer to L. F. Young, Secretary. Standard Portland Cement Corporation, by L. F. Young, Secretary." As a matter of fact, when certificate #160 and 179 left my hands, which are the certificates apparently assigned to the Standard Portland, they left my hands with a blank indorsement only. The certificates were all in blank, except that one to Russell in the first instance.

As to the indorsements on the back of certificate #164, my signature and the word "witness" are in my own handwriting. Mr. A. Lothian Russell—I don't know how he came to indorse that, but I think it was just as a witness, you know. That is in his handwriting. Mr. Russell was—I don't know what you would call it in this country—a salaried attorney of the firm; that is to say, he got a salary and a certain commission of the profits. Mr. Russell has also put his notarial seal on that. When I sent this down to Mr. Wenzelburger, I thought I would not take any chances if I had my signature certified to by a notary public, and Mr. Russell is a notary public; so that the indorsement reads, "Ernest E. Evans. Witness: A. Lothian Russell," with the notarial seal of Mr. Russell attached.

As to the indorsements on the back of certificate #196 for 150 shares, none of those are in my handwriting; this certificate they simply transferred to me, indorsed by Mr. Wenzelburger in blank, and I



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sent it back just as I received it; I sent it back to the Western Fuel Company, of which Mr. Howard was the President and Mr. Norcross was the Secretary. [165—42] The indorsements on this certificate #196 are as follows: "For value received, I hereby assign the within certificate to the Standard Portland Cement Corporation. A. Wenzelburger." A further indorsement, "Sig. O. K. D. C. Norcross." A further indorsement, "Transfer to L. F. Young, Secretary, Standard Portland Cement Corporation by L. F. Young, Secretary." When I received this from Mr. Wenzelburger, it was simply indorsed in blank by him; he returned it with his certificate of examination—his report. I held it until we had sold the things to the Standard Portland Cement Corporation; and on April 13th, 1908, I forwarded this certificate to Mr. Howard, the President of the Western Fuel Company; and my letter of April 13th, 1908, shows, among the certificates there listed, certificate #196, for 150 shares, in the name of A. Wenzelburger. This letter of April 13th which I have referred to is the only letter which I wrote to Mr. Howard concerning or affecting these certificates of stock. I forget the exact date the arrangement was entered into, but I was down here at the time that I went to Del Monte and when I got back to Vancouver I got all these certificates together, and sent them down to be exchanged. Everything was arranged down here: I simply had to return these things to be handed over in exchange for the note. No letters beyond these passed. So far as the correspondence

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goes, these letters which I have exhibited here are the only ones.

I was in Vancouver when I received Mr. Wenzelburger's report. I received it about the end of February.

Q. In this conversation which you had with Mr. Howard at Nanaimo in June—

A. (Intg.) I rather think it was at Vancouver, you know.

Q. Oh, I see, well at either place?

A. His habit was at that time to go from Seattle to [166—43] Victoria, and from Victoria to Nanaimo; then he would take the boat over in the morning, leaving Nanaimo at 7 in the morning and getting to Vancouver about 10:15; then he would leave at 4 o'clock in the afternoon for Bellingham which is only about two hours' ride.

Q. Assuming the conversation occurred in Vancouver, I wish that you would relate as fully as you can all that you recollect of that conversation.

A. I forget exactly what took place, only I told Mr. Howard that in view of our not being able to get any information whatsoever from Mr. Dingee, and in view of our having received word that these accounts had not been paid, that we ought to have an investigation made. Then he informed me according to the laws of the State of California, any registered shareholder had the right to go into the register office of the company and demand to see the books. I said, "Very well; now, I want to have that done," and I said, "The proper person to do that is a first-class

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accountant. Can you recommend me a man?" And he said that he knew of a man—no, as he was going down to San Francisco, that interview must have been in Vancouver. "Now," I said, "you arrange with this man to make the investigation." Now, whether I wrote Mr. Wenzelburger or not, I could not say. I do not recollect anything further that was said in that conversation. These suggestions that these books should be examined did not originate from Mr. Howard. It originated with me. The information came from him that a registered shareholder might examine the books. He told me it was the law. He told me what the law was—that any shareholder—I mean to say a properly registered shareholder could go into the companies' office and demand to see the books.

I do not recollect anything further that was said in that conversation, and I have given now my entire best recollection [167—44] of the conversation. This was before I had received Mr. Wenzelburger's report.

When I received Mr. Wenzelburger's report, I did not communicate in any way with Mr. Howard. I came down to San Francisco as soon after as I possibly could. That would be sometime in March; early March it was. I was delayed a little by my brother, who was my partner. He was down with typhoid fever and I could not get away right away. I think I was delayed about ten days. Within about ten days after the receipt of the Wenzelburger report, I came down to San Francisco. I do not recollect

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writing any letter of any sort to Mr. Howard prior to coming except that I might have written him saying that I was coming down. Oh, naturally I would have done that, I suppose. I do not recollect whether I wrote anything else, nor do I recollect having received any letter from him.

Mr. Dingee offered to me, through Mr. Howard, my choice as between the note of the Santa Cruz Company and the Standard Portland Cement Corporation, and I preferred to select the note of the Standard Portland Cement Corporation.

Q. Was anything said by Mr. Howard as to Mr. Dingee's ability to give these notes of theirs of these companies?

A. Yes, he told me, as I understand it, that Mr. Dingee had consulted his legal friend, Mr. Garret McEnerney, and that they had the power to enter into a transaction of this sort.

Q. That is with reference to the legal aspect of it; but was anything said by Mr. Howard concerning Mr. Dingee's ability to give you the note of either of these companies by reason of his control over the companies?

A. I don't recollect his saying anything about that at all.

Q. But, at all events, his ability to give the notes was never questioned, was it? [168—45]

A. It was unquestioned. After Mr. Howard's interview with Mr. Dingee, we did not discuss what should be done in the event that no settlement was possible. That subject matter never came up. It

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never came up at any time as to what should be done in the event that no settlement was practicable. As I told you, when I came down to San Francisco, the first man I consulted was Mr. Sidney Smith, who I had known. He was a practicing lawyer in San Francisco; not only that, he represented certain British institutions, the Bank of British Columbia, and Canadian Bank of Commerce. I had met him on different occasions; not only that, he was a director of the Western Fuel Company, and a man I had a very high opinion of, and, knowing he was interested financially in this very same thing, naturally he was the man I saw at first; and, as I say, I went over to his office in the Merchants' Exchange Building. We had an informal talk and we got hold of Mr. George W. Spencer, as I say, he has since died; and we went over and had an interview with Mr. Howard. I interviewed Mr. Smith. I interviewed Mr. Howard. Of course, naturally, when I arrived I paid my respects to Mr. Howard, naturally, as one of the first things I did when I arrived in San Francisco. In the morning, I usually go around and see my friends, the Balfours, first, and then I go to see the Western Fuel Company. But the first person whom I discussed this particular business with was Mr. Sidney Smith, and that was before I opened the subject with Mr. Howard. When I had my conversation with Mr. Smith, we discussed together what was the best thing to do, whether we should go and interview Mr. Dingee ourselves, or whether Mr. Howard should. I could not tell you what facts I stated



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to Mr. Smith. He got a copy of Mr. Wenzelburger's report.

Q. From whom did he get that report?

A. When I got it I had several typewritten copies [169—46] made up. I sent one down—I don't know how many I sent down here. No, I did not send it to Mr. Smith direct. I sent it to Mr. Howard. I am not positive whether I exhibited one to Mr. Smith but Mr. Smith had seen it, because directly I got it I had copies made, and sent it down. In my conversation with Mr. Smith on this occasion, I don't remember whether any reference was made to the Wenzelburger report.

Q. Did you refer in that conversation with Mr. Smith to any of the acts or conduct of Mr. Dingee in handling the affairs of the Northwestern Portland Cement Company?

A. Well, I told him that I had written to Mr. Dingee for information, and I could not get any reply.

Q. So that your conversation with Mr. Smith turned upon the dealings and conduct of Mr. Dingee in the affairs of the Northwestern Portland Cement Company—that was what you went to consult him about, wasn't it?

A. Well, I went to consult Mr. Smith to see what he thought in his judgment—what we both thought in our own judgment was the proper procedure to take in connection with finding out what they intended to do with the Northwestern Portland Cement Company. The affairs of that company was

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the subject of the conversation that time between me and Mr. Smith, and it was to get some light on that subject that I went to Mr. Smith to learn what was the best course of procedure to follow; that is, I mean to say, he was interested, but as a solicitor in whom I had confidence. My ultimate object in the matter was to find out—get some information as to my investment.

Q. Was your object simply to get information, or was it to get your money?

A. Well, I wanted to get some definite information as to whether—they had stopped work, as you know—I wanted to get some definite information as to when they were going on [170—47] with their work, or whether they were going on with their work at all, or what. I had not formed any plan in my own mind as to what I intended to do. I came down with a perfectly open mind.

Q. Notwithstanding the information you received from Mr. Howard in Vancouver that these men were starving upon the property, you came down simply to inquire further information on that subject; was that your idea?

A. I came down to find out the exact condition of affairs, that is what I came down for.

Mr. OLNEY.—Mr. Dunne, I call your attention to the fact that your question misstated the fact.

Mr. DUNNE.—I don't want to do that.

Mr. OLNEY.—No, I am mistaken. I got the two Howards mixed.

Mr. DUNNE.—Yes, I am referring to the Howard

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referred to in the letter of January, 1908.

WITNESS.—C. W. Howard, he gave me this information about the men starving on the property, and about not having their wages, and about to put liens on, and that sort of thing. I came down to San Francisco to find out the position of affairs, just as you or anybody else would. I could not get any information from Mr. Dingee; neither could Mr. Howard. I had formed no definite plan as to what I intended to do; of course, not being conversant with the laws, and not having very much of an opinion of the procedure under the laws, I wanted to get into right hands, and, as I say, Mr. Smith has represented several British institutions for some time, and, naturally, being a Britisher, I went to him; I might have gone to you had I known you. As to the payment of the various claims referred to in the last paragraph of the letter of January 7th, 1908, I got information from Mr. C. W. Howard of Bellingham that the money had been remitted by telegram, and that the claims had been paid. I mean [171—48] to say, that he was disbursing. I could not tell you the exact date when I got the information, but in this letter it says that the claims will be paid before the 15th, and I know they were. Now, what date, I could not tell you, it was before the 15th of January, 1908, or by the 15th of January, 1908, Mr. C. W. Howard of Bellingham told me that he had received the money. In 1908, especially during the month of February, 1908, there was accrued interest unpaid on the outstanding bonds of the Northwestern Port-

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land Cement Company. The coupon due on the first of November, 1907, was not paid; of course, that was the time of the panic, you know. I know that according to this report the stock of the Bellingham Bay Railway was bought, and, of course, it was the property of the Northwestern Portland Cement Company. I do not know where that stock was in February, 1908, or anything about it. It was reported up there that the stock had been bought—the Cornwall interest had been bought by Mr. Dingee; but I did not know anything about it until I saw that report, that is to say, who the owners were; and that is the extent of my knowledge about that stock.

It was Mr. Dingee who suggested inserting the terms of one year in these notes sued on here. I got that information through Mr. Howard as the result of his interview, which we asked him to go and make; and I agreed to that length of time. We thought that it was but reasonable, as we knew that owing to the panic everything was tied up here and things were improving.

Q. When you left Mr. Smith, as I understand you, you spoke to Mr. Howard on the subject matter of the affairs of the Northwestern Portland Cement Company? A. When I left Mr. Smith?

Q. After you left Mr. Sidney Smith's office?

A. To the best of my recollection, both Mr. Smith and myself went over to Mr. Howard's office together.  
[172—49]

Q. And did you continue the discussion there as to the affairs of the Northwestern Company?

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A. Well, Mr. George Spencer was called in, and, as I say, the whole four of us discussed the thing informally. We discussed as to who was to **approach**—interview Mr. Dingee to get definite—to get some information.

Q. Was any reference made to the purpose for which Mr. Dingee was to be approached,—the reason why he should be approached at all?

A. Well, as President of the company to get an explanation as to when they were going on with the works. The fact of the cessation of work at the plant was discussed, and also the lending of this money by Mr. Dingee to these other corporations was discussed. Well, really, I forget what other subject matter was discussed in the conversation with Mr. Howard when Mr. Sidney Smith was present. As to whether any reference was made to the Wenzelburger report, well, of course, we had all seen the Wenzelburger report, and I do not think that any reference was made; of course, we knew the contents of his report, we took those facts for granted. The disposition of these funds by Mr. Dingee was referred to. Beyond what I have already stated, I do not recollect anything else that was said in that conversation. I cannot recollect whether the subject matter of any sort of settlement of our claims was discussed in this conversation.

Q. There is one other matter I would like to call your attention to, and I hope you will correct me if I am in error, Mr. Evans. I understood you to say that you thought there might be some further correspondence bearing upon the matters what we have



(Deposition of Ernest E. Evans.)

been discussing yesterday and to-day. I think I can state it from memory, without taking the time to look it up. If I am not in error you stated yesterday that you thought there [173—50] might be some further correspondence, or that there was some further correspondence,—I am not sure about the exact verb, relating to these matters which are under discussion here, in Vancouver; that it might have been turned over by the old partnership to the new corporation. Later on in your testimony I understood you to say further, when speaking of the gap between the 7th of January and the 28th of March, 1908, that there was some further correspondence. And later on, I understood you to say that there was no further correspondence. Now, I would like to have that cleared up. I would like to know definitely whether there is or is not, any further correspondence.

A. No. When I referred to these letters it stopped; and, if you recollect, I went over this letter again, and there was a good reason why it should stop, because Mr. Howard visited me then and I feel practically sure that there was nothing passed,—nothing passed after that until I went down to San Francisco; and I feel this way, Mr. Dunne, that Mr. Howard—now, whether I instructed Mr. Wenzelburger or not, direct, I don't know; I don't recollect. I may have indorsed a certificate and sent it down to the Western Fuel Company, telling them to instruct Mr. Wenzelburger. All I know is I am practically sure I paid his fees, and then afterwards the other people interested in the suit paid pro rata pro-

(Deposition of Ernest E. Evans.)

portion; they pro-rated it up. There is no other correspondence that I know of, anywhere, whether in San Francisco or in Vancouver, which would throw any light upon the transaction which we are discussing here. I don't think so, because everything relevant—anything that had anything to do with the thing I have had copies made, and those copies compose this file I have here. The reason I say “extract from Mr. Howard's letter”—of course, you will understand that our business transactions were not exclusively in connection with this—that I am interested in several other things in which Mr. [174—51] Howard is interested. Now, for instance, we being so closely associated with the Western Fuel Company's properties for over twenty years, of course, he writes us a good deal, and we knowing what happened in the past, have better information than he has.

I gave the address of Mr. E. H. Warner incorrectly. I got confused between W. P. and E. H.; but I am almost sure that the E. H. is at Quornhall.

Q. I notice, Mr. Evans, on page 22 of your testimony of yesterday, the following question and answer: “Q. These papers really represent extracts from the correspondence? A. Well, the whole letters. Q. And the various letters and documents from which the extracts are made here are in your possession, are they not? A. They are in the possession of Evans, Coleman and Evans. Q. At Vancouver? A. At Vancouver.”

Mr. OLNEY.—In the possession of Evans, Cole-

(Deposition of Ernest E. Evans.)

man and Evans, Limited is what he said.

Mr. DUNNE.—No, he says Evans, Coleman and Evans, later on, at lines 15 and 16: “Q. In whose possession are these papers? A. They are in the possession of Evans, Coleman and Evans, Limited.”

WITNESS.—Of course, they belong to the old firm; they are all stored. They are available. Of course, what has happened since I left I do not know; they may have a general clear out. You amass such a tremendous mass of this stuff, and of course they might say anything two years old let's destroy it. When I wrote a letter I preserved carbon copies of it. We have a system, a carbon taken, and the original is also copied in a book. You see, we have several partners and all these carbons are distributed around, and we all read each other's letters. The originals of these various letters are available in Vancouver; they should be.

Mr. DUNNE.—Then, we will call on you, Mr. Olney, for the [175—52] production of the originals of these various letters and documents referred to in the testimony of the witness.

Mr. OLNEY.—What is the object?

WITNESS.—I am not going to be there, but I can write up to a Mr. Russell there, he is now the managing director, to tell the girl to get all these things together.

Mr. DUNNE.—I should not suppose it would be a very difficult matter.

WITNESS.—Oh, no, I do not think so, I should not think so.

(Deposition of Ernest E. Evans.)

Mr. OLNEY.—Mr. Dunne this statement he testifies was made out long ago, and I don't think there is any question about its accuracy.

Mr. DUNNE.—He says: "Q. When did you have these extracts made, Mr. Evans?

"A. I should think probably about twenty months ago."

Mr. OLNEY.—They were made up for his information, and not in response to any advices down here at all, so I don't think there is any question about their accuracy.

WITNESS.—I have nothing to disguise. I was dissatisfied; could not get any information; and Mr. Robert Bruce is a very dear old friend of mine, and I had every copy of the letters bearing on the subject made out before I went to England. I left for England about the 17th of December. I left Vancouver about the 17th of December, two years ago,—in 1908. I had all these copies of these things made out and sent down to Mr. Robert Bruce. That is the way I can fix the date. Of course, the correspondence has been overhauled so often, it might not be intact, you know. I have the same stenographer. She has been with me for over four years. She may have filed some of these letters under the Western Fuel Company file. We are the local agents for the Western Fuel Company. [176—53]

I wrote two letters to Mr. Dingee to neither of which did I receive any answer. I did not write any other letter to Mr. Dingee,—to the best of my recollection, no. I cannot see what I could have written

(Deposition of Ernest E. Evans.)

to him about. My brother saw Mr. Dingee in 1905. Mr. Dingee, in 1905, was after this property that we were jointly interested in with Balfour-Guthrie. This Balfour-Guthrie property was entirely different from the property subsequently acquired by the Northwestern. It is a distinct and disconnected property; one is opposite the other; it is a valley. The mountains go up this way and that way (indicating); Balfour's is on one side and this is on the other side. My brother came down here to interview Mr. Dingee with Mr. Howard. Mr. Dingee wanted to buy the Balfour property in 1905.

Q. You were the active member of your firm in all these cement dealings?

A. Well, my brother and I but at that time Mr. Howard wanted one of us to come down to see Mr. Dingee.

Q. But, subsequently, I mean—during the transactions which we have been discussing here.

A. Oh, this is just a year before the earthquake, you see.

Q. What I want to get at is this: during the transaction which we have been discussing here, and which are involved in this suit, I ask you if you were the active member of your firm?

A. Yes, that is right. I transacted all the business. My brother Percy only came down here in 1905 and made Mr. Dingee the offer on this Balfour property.

I feel positive no other letters were sent to Mr. Dingee from my office aside from the two I have referred to, relating to the affairs of the Northwestern



(Deposition of Ernest E. Evans.)

Portland Cement Company. As I told you, I never met Mr. Dingee. But my brother [177—54] met him in 1905 and Mr. Dingee was not as polite as he could have been, and my brother just simply gave him back the change. Mr. Dingee asked for an offer of this Balfour-Guthrie property, and my brother made him what we considered a very reasonable offer. That shows Mr. Dingee was in the field a long time. This Balfour-Guthrie property was cement property also.

WITNESS.—Now, do you want these letters, or not?

Mr. DUNNE.—For the reporter's sake, I think they should be left so that he may copy them. (Reporter stated that the copying of the letters into the record had been completed.)

WITNESS.—I have the majority of the copies but I can send these copies back to Vancouver and tell the girl to make a thorough search and get all the correspondence bearing on the subject, and send down to Mr. Olney, and then he can pick it out. Is that what you wanted?

Mr. OLNEY.—Yes.

And be it further remembered that here the direct examination of said Ernest E. Evans as given upon the taking of said deposition ended; and that thereupon the following motion to strike out was made:

Mr. DUNNE.—The Standard Portland Cement Corporation, and, to make it entirely clear, all parties represented by Morrision & Brobeck, or Morrision & Brobeck and J. J. Dunne, moved to strike

(Deposition of Ernest E. Evans.)

out all of the testimony of the witness relative to values, and particularly to the value of any estate or assets of the Northwestern Portland Cement Company, on the ground that the same is incompetent, immaterial and irrelevant, without foundation, it not appearing that the witness knew either the intrinsic value of the alleged assets or the market value thereof; and upon the ground that the answer as given was not responsive to the question asked.

The MASTER.—The motion to strike out is denied. [178—55]

Mr. DUNNE.—We take an exception.

And be it further remembered that thereupon the cross-examination of said Ernest E. Evans, as given upon the taking of his said deposition was read, the following occurring:

Mr. OLNEY.—I will read his cross-examination. The cross-examination commences at page 103, and the first question is: “Q. Mr. Evans, at the time of the sale of the bonds and stocks of the Northwestern Company to the Standard Portland Cement Corporation, had you considered in your own mind the value of the assets of the Northwestern Cement Company?”

Mr. DUNNE.—We object to that question upon the ground stated in the deposition, namely: that the question and the evidence sought to be elicited thereby are incompetent, immaterial and irrelevant, and not pertinent to any issue in the case, and assuming a fact as to which there is no evidence, to wit, that there was any sale to the Portland Cement Cor-

(Deposition of Ernest E. Evans.)

poration. We respectfully insist that a man's mental processes are not evidence. Evidence consists of things that are said and things that are done, but the uncommunicated or secret mental processes of an individual are not competent evidence under any system of evidence. The Standard Portland Cement Corporation cannot be bound by any consideration Mr. Evans might have had in his own mind, uncommunicated to that corporation, or to some one of its officers. The evidence is inherently incompetent. This is not the development of a real value, but merely the private mental picture of an individual concerning that value.

The MASTER.—I will overrule the objection.

Mr. DUNNE.—We note an exception.

“A. Yes.

Q. What figure, if any, did you put upon those assets?”

Mr. DUNNE.—The same objection last hereinabove made, together with the additional objection that his mental condition, [179—56] or mental processes, beliefs or private opinions, uncommunicated, are immaterial to any issue in this cause, and do not constitute any fact or facts by which any of the parties represented by us could be bound, or should be bound. You are asking him here what figure he put on those assets; of course, we contend, among other things, that he is utterly incompetent to put any figure on those assets; he has not the knowledge; he has not the familiarity.

(Deposition of Ernest E. Evans.)

Mr. OLNEY.—He had the Wenzelburger report before him.

Mr. DUNNE.—Yes, but that is piling hearsay upon hearsay.

The MASTER.—I will take the matter under advisement and look into the authorities and decide the matter to-morrow morning.

Mr. OLNEY.—I suppose I might as well read the rest of the deposition so as to get along.

The MASTER.—Very well.

Mr. OLNEY.—(Reading:) “A. Well, I considered that they were worth between \$240,000.00 and \$250,000.00, that is, if the Company were liquidated.”

Mr. DUNNE.—I move to strike that answer out upon all the grounds stated in the objections last hereinbefore made, and upon the further ground that it is purely a speculative answer. He does not attempt to state a fact there, but he attempts to state something which might be if something else happened. It is a mere argument, a mere piece of speculation on his part.

The MASTER.—The ruling will be reserved on that also.

Mr. OLNEY.—(Reading:) “Q. By ‘liquidated’ you mean—

A. That is to say, if the company went into liquidation and the assets were sold, they should realize between \$240,000.00 and \$250,000.00 but as a going concern I considered that it was worth par easily because the money which was actually spent [180—57] in construction would have had to be

(Deposition of Ernest E. Evans.)

spent anyhow.”

Mr. DUNNE.—We renew the motion to strike out all of that answer relating to the alleged value of the concern as a going concern being par, upon all the grounds stated in the objections, and upon the further ground that the answer is not responsive to the question; and, moreover, here again we find this witness speculating as to possibilities—not even probabilities but possibilities; this is not an answer stating a fact, it is an argument.

The MASTER.—I will reserve the ruling upon that, and rule upon it later.

Mr. DUNNE.—Will you stipulate that these objections may run all through to this line?

Mr. OLNEY.—The stipulation covers the whole thing, Mr. Dunne.

Mr. DUNNE.—All right.

Mr. OLNEY.—The stipulation in the deposition covers these objections.

Mr. DUNNE.—Very well; but not the motions to strike out?

Mr. OLNEY.—No, not the motions to strike out.

Mr. DUNNE.—We will have to press them.

Mr. OLNEY.—Now, the next question is: “Considering the concern as a going concern, or as a concern the owners of which contemplated going ahead with it, would you have put a different figure upon the assets? A. Certainly, the going ahead with it; I would consider it fully worth par.”

Mr. BROBECK.—Will it be necessary now to renew the objection?



(Deposition of Ernest E. Evans.)

Mr. DUNNE.—No, not the objection nor the motion to strike out.

Mr. OLNEY.—That is right. [181—58]

The MASTER.—No, it will not be necessary to repeat the objection.

Mr. DUNNE.—We will ask your Honor to take that under advisement too. We claim on our side that it is open to all the vices which have been alleged against the other answers. I would like to add to the motion to strike out this last answer the ground that the question is in the disjunctive, and also the ground that it really involves two questions, and the further ground that it is not proper cross-examination.

The MASTER.—Very well, that will be taken under advisement.

Mr. OLNEY.—The next question is: “Q. At the time referred to on the sale of your stocks and bonds to the Standard Portland Cement Corporation, did you have any information as to the plans of Mr. Dingee, or Mr. Bachman, for going ahead, or not going ahead with the Northwestern Cement Company? A. Yes: I distinctly understood all along that they were going ahead with this, only they had stopped it, owing to the financial panic until things settled down again, and at the time that I met Dr. Bachman when he went to examine the property of course we spent the evening together, and he distinctly stated this Northwestern Portland Cement Company was to be eventually amalgamated to the Santa Cruz and the Standard Portland Cement Corporation.”

(Deposition of Ernest E. Evans.)

Mr. DUNNE.—I move to strike out this answer upon the *the* grounds heretofore stated, and because incompetent, immaterial and irrelevant, not responsive, involving hearsay, *ex parte* declarations of persons by whose statements none of these parties represented by us could be bound or should be bound, and not proper cross-examination. In this connection I suggest to your Honor the propriety of taking this motion to strike out under advisement.

The MASTER.—Very well. [182—59]

Mr. OLNEY.—The next question is: “Q. What interest, if any did you understand the Standard Portland Cement Company had with the Northwestern Cement Company? A. Well, the idea of starting the Northwestern Company was strategic, and with the idea of protecting the other factors.”

Mr. DUNNE.—I move to strike out the answer upon the grounds last hereinabove stated. I suppose it will be taken under advisement also.

The MASTER.—Very well.

Mr. OLNEY.—Q. What interest, if any, would the Standard Portland Cement Company have in purchasing bonds of the Northwestern Cement Company?

A. Well, they considered at that time it was very vital, very important, for the protection of the Standard and also the Santa Cruz, that they should have a plant in the north in the Puget Sound Country.

Mr. DUNNE.—I move to strike out the answer on all the grounds heretofore stated, and further on the grounds that the question is intended to develop, and

(Deposition of Ernest E. Evans.)

does develop nothing more than the conjecture or opinion of the witness, his mere conclusion, and that is not evidence by which any of these parties can be bound.

Mr. OLNEY.—Q. From what did you derive your information upon that point? A. From whom?

Q. From whom, yes.

A. I originally heard that, of course, in 1905, and I got confirmation of it from Dr. Bachman at the time that he was examining the property at Kendall and at Vancouver.

Mr. DUNNE.—I move to strike out the last answer upon all the grounds heretofore stated.

Mr. OLNEY.—Q. What statements did Dr. Bachman make to you at this time?

A. He stated that it was of utmost importance that they should go right ahead with these works and rush them to completion.

Mr. DUNNE.—The same motion to strike out.  
[183—60]

Mr. OLNEY.—Q. You have testified, Mr. Evans, that all of the certificates of stock which you sent down to Mr. Howard to be turned over, in pursuance of the settlement made with Mr. Dingee through Mr. Howard, were sent down by you endorsed in blank?

A. That is right, yes.

Q. Did you understand at that time that some of these certificates were to be turned over to Mr. Dingee and others to the Standard Portland Cement Corporation?

A. They were to be handed over to the Standard

(Deposition of Ernest E. Evans.)

Portland Cement Corporation in exchange for their notes, which were subsequently to be endorsed by Mr. Dingee; and, mind you, I made no stipulation when I agreed to this proposition, that Mr. Bachman was to endorse. I considered that with Mr. Dingee's endorsement, it was sufficient.

Mr. DUNNE.—I move to strike out the answer upon all the grounds which have heretofore during the cross-examination of this witness, been stated, and upon the further ground that the evidence develops merely his conclusion.

The WITNESS.—I might just as well have sent them to a banker, as not, only, of course, having absolute confidence in the Western Fuel Company, I sent the securities to them to turn over to the Standard Portland Cement Corporation.

Mr. DUNNE.—Same motion.

Mr. OLNEY.—Your understanding was that all the certificates were to be turned over to the Standard Portland Cement Corporation?

A. Yes, sir, in exchange for these notes.

Mr. DUNNE.—Same motion to strike out.

Mr. OLNEY.—Q. And there was no distinction made between the stock which you have received as promotion stock, or commission, as it were, and the stock which you received as a bonus on the purchase of the bonds? A. None whatsoever.

Mr. DUNNE.—Same motion to strike out, on all the grounds heretofore stated. [184—60a]

Mr. BROBECK.—Does that conclude your cross-examination of Mr. Evans?

(Testimony of Ernest E. Evans.)

Mr. OLNEY.—That concludes our cross-examination of Mr. Evans.

Mr. DUNNE.—Mr. Evans, will you take the stand?

**[Testimony of Ernest E. Evans, for Complainant.]**

Thereupon said ERNEST E. EVANS took the stand as a witness, and after having been first duly sworn, testified as follows:

Mr. DUNNE.—Q. Mr. Evans how many visits in all did you make to Kendall, Whatcom County, Washington?

Mr. OLNEY.—We object to that if your Honor please, on the ground that it is a matter before gone into.

The MASTER.—The objection is sustained.

WITNESS.—A. I could not tell you.

Mr. DUNNE.—You need not answer Mr. Evans.

Mr. BROBECK.—We are entitled to an answer anyhow, aren't we?

The MASTER.—Not according to the order of reference.

Mr. DUNNE.—Will you read the question Mr. Reporter? (Question read by the Reporter.) I press the question. **[185—60b]**

The MASTER.—Reasonable repetition I would have no objection to, but I cannot be sitting longer than is necessary. Some action must be taken against the possible repetition of the matter we have been listening to now for nearly two days.

Mr. DUNNE.—Yes, sir. I simply want to direct his attention to a certain subject matter. Do you press your objection Mr. Olney?



Testimony of Ernest E. Evans.)

Mr. OLNEY.—Yes, we stand on the objection.

Mr. DUNNE.—And your Honor sustains the objection to which we really take an exception?

The MASTER.—Yes.

Mr. BROBECK.—In this connection we will also move that the witness be permitted to answer notwithstanding the view of the Master as to the admissibility of the answer, for the purpose of enabling the Circuit Court to review the matter under the order of reference.

The MASTER.—The motion is denied.

Mr. DUNNE.—We note an exception.

Q. Will you state the area of the holdings at Kendall, if you can, the holdings of the Northwestern Company?

A. I cannot state exactly, but to the best of my belief and knowledge about between 640 and 1000 acres; roughly, I should think that about 320 acres of that area was lime deposit land. I should judge that about one-third of the total area was lime deposit land. I don't know for certain. The Balfour-Guthrie lands were directly opposite Kendall, on the other side of the valley. As to the distance between them, I should think that the flat of the valley was probably from one-half to three-quarters of a mile. There are precipitious mountains, you understand, and the flat was about three-quarters of a mile wide with a railway in between. I should say that the distance of the Kendall lands of the Northwestern Company from the Balfour-Guthrie [186—61] property was between a half a mile and three-quar-

(Testimony of Ernest E. Evans.)

ters of a mile. It was a continuation of the ridge.

I have not the least idea as to what was the intrinsic value of the lands at Kendall for agricultural purposes. I should think the flat land that the Northwestern Company owned, for agricultural purposes, was worth between \$15,000.00 and \$20,000.00. I have never myself operated agricultural land: I have been a commission merchant only all my life. I was interested in a ranch once, but aside from that I have had no personal experience with agricultural land. Aside from the lime deposit there, that land had upon it the natural timber that was there when the place was located. These lime deposits were not on what I call the flat of the valley, the exposure that we saw first was on the hill about 250 or 300 feet up. There were exposures further down, and higher yet. I should estimate that the first lime exposure was between 250 and 300 feet high above the level land; as you went up the hill and met the first lime deposit it would be between 250 and 300 feet high.

I received a coupon interest out of the Northwestern Portland Cement Company, but aside from that I did not receive any other dividend. I could not recollect how many coupons were paid me. I do not know that any sinking fund was established by the Northwestern Portland Cement Company. All I know is Mr. Wenzelburger's report, apart from that one.

Q. In the course of your testimony you refer to certain other cement companies which had got their

(Testimony of Ernest E. Evans.)

factories started during these delays which have been referred to in the deposition. Now I ask you if those companies were established on or before May 1st, 1908.

A. To the best of my recollection, the Washington Portland Cement Company was being operated then. The Superior plant had not yet been completed. I could not tell you how near completion [187—62] the Superior Portland Cement Company's plant was at that time. I was never there, and all the information I got was from hearsay. Except these two, prior to May, 1908, there was no other cement plant being constructed in the State of Washington.

Q. It was a matter of business importance, was it not, to the Northwestern Company to get its plant in operation before these rival companies got started?

A. There would have been considerable advantage in having the plant started before the others.

In the course of my deposition I referred to a couple of donkey engines, but I have never seen them. I never had any stock in the Bellingham Bay and British Columbia Railway.

And be it further remembered that thereupon JOHN L. HOWARD was called as a witness on behalf of said Standard Portland Cement Corporation, and that after having been first duly sworn he testified as follows, to wit:

**[Testimony of John L. Howard, for Standard  
Portland Cement Corporation.]**

Direct Examination.

My name is John L. Howard. I am sixty-one years of age; and I am a merchant by occupation. I have been engaged in business in San Francisco for about thirty years; chiefly in the coal line, latterly in building materials also. I have had business connections in Vancouver and British Columbia. I began there in 1903. The Western Fuel Company, of which I am President, has mines at Nanaimo, and the firm of Evans, Coleman & Evans were our local agents for the sale of that coal in the city of Vancouver. Mr. Ernest E. Evans, who was just upon the witness-stand, is a member of the firm of Evans, Coleman and Evans, as it then was. During my business experience in San Francisco, I have always been interested in corporate enterprises and have maintained a knowledge of the details of the various corporate enterprises I was interested in. These interests of mine in the [188—63] north, in the Puget Sound country, took me north, as a rule, about four or five times a year, and sometimes six. I have finished the forty-first trip since the beginning of 1903; and on these trips I generally visited Portland, Seattle, Victoria, Nanaimo and sometimes Vancouver. In the course of my business life, I tried to keep myself abreast of the business world and informed of what was going on therein in the country where I was interested. The Western Fuel Company carries on a coal business. Beginning with 1903, it

(Testimony of John L. Howard.)

began to handle, among other things, cement. I was the President of that Company. As to the relationship of that company and the Western Building Material Company, in 1906 we separated the building material department from the coal and coke business of the Western Fuel Company for convenience in operating our business and accounts. The Western Building Material Company was organized and entirely owned by the Western Fuel Company, and it kept a separate organization and a separate system of accounts. It was an independent corporation, but all the stock was owned by the Western Fuel Company. I was President of the Western Building Material Company, and I am still. Mr. Ernest E. Evans is a shareholder in the Western Fuel Company.

As to the relations between the Western Fuel Company or the Western Building Material Company and the Standard Portland Cement Company, in 1903 the Western Fuel Company was one of three selling agents for the Standard Portland Cement Company. In 1904, the Western Fuel Company became the sole selling agent for the Standard Portland Cement Company, under a five year contract. In 1906, when the Santa Cruz Company was nearing completion, a contract was made with it, and a new contract was made with the Standard Company. They ran contemporaneously for five years. In 1906, after the contracts with both companies had been made with the Western Fuel Company, those contracts were assigned to the Western Building



(Testimony of John L. Howard.)

Material Company with the consent [189—64] of the two cement companies. The meaning of the phrase, "sales agent," as used in connection with this business, was that we were to handle the product of the cement companies, using due diligence in the marketing of the goods. It was presumed to be exclusive, but there was a clause in each contract under which the cement companies might sell for their own account, but if they did they would account to us for those sales which were made individually. Aside from that qualification, I was the exclusive sales agent.

Q. Have you those contracts here?

A. I don't know whether the secretary brought them or not.

Q. I exhibit to you a paper marked on the back, "Contract with Standard Portland Cement Co." It is further marked on the back "Exhibit B, R. B. T., N. P." I ask you to look at that paper and state whether you can identify it; and when I say "that paper," I mean all the instruments which are there bound together.

A. I identify the contract as having been signed by me on behalf of the Western Fuel Company. I identify all these papers.

Q. I exhibit to you also a paper marked on the back, "Standard Portland Cement Co. Exhibit A, R. B. T., N. P.," and ask you if you can identify that document.

A. I identify the contract between the Standard Portland Cement Co. and the Western Fuel Co. I

(Testimony of John L. Howard.)

identify the papers.

Q. I also exhibit to you a document marked, "Contract with Santa Cruz Portland Cement Co. Exhibit C, R. B. T., N. P.," and ask you if you can identify that.     A. Yes, sir.

Mr. DUNNE.—I offer in evidence the document marked [190—65] on the back, "Standard Portland Cement Co. Exhibit A, R. B. T., N. P.," just identified by the witness, together with its attached papers, and ask that it be read in evidence into the Reporter's notes as an exhibit on behalf of the complainant, and will be "Complainant's Exhibit No. 1."

Thereupon said exhibit was received and read in evidence in this cause, and is in the words and figures as follows, to wit:

**[Complainant's Exhibit No. 1.]**

"August 7, 1903.

Messrs. Standard Portland Cement Co.

Crocker Building,

City.

Dear Sirs:

Referring to the conversation had by the writer with Mr. Dingee regarding the contract between you and this Company:

The contract is silent as to the date of its operation, but we understand it to be January 1st, 1904, unless some satisfactory arrangement may meanwhile be made with the E. B. & A. L. Stone Company and the Henry Cowell Company, under which the contract may become operative at an earlier date.

As to paragraph 4, 5 and 6—

We understand that our sales returns are to net you \$1.60 for bulk Cement at factory.

This Company has been jobbers of Cement at Oakland where it has a warehouse, also at San Francisco where it proposes to increase its warehouse facilities.

We take it that it is a matter of indifference to you whether the Cement be sold at wholesale in San Francisco and Oakland to John Smith, to John Jones or to the Western Fuel Co. for jobbing purposes.

With your knowledge and consent we propose continuing the jobbing business, but buying only for our own account such Cement as cannot be sold for direct delivery from cars and that must be carried for delivery from warehouse for small orders and [191—66] for sudden calls.

It is understood, of course, that this is to be carried on in good faith and under the spirit of our contract, and that sales which might be made for direct delivery are not to be manipulated to pass through the warehouse.

The warehouse accounts will always be kept distinct from those of other sale, and will be open to examination at any time.

Have you any objection to this?

Yours very truly,

Pres'dt.

William G. Henshaw,     William J. Dingee,     Irving A. Bachman,     Frank A. Losch,  
President.     Vice-President.     Manager.     Secretary.

STANDARD PORTLAND CEMENT COMPANY.

Telephone: Private Exchange 302.

Office: 30-34 Crocker Building.

(STANDARD  
office  
30-34 Crocker Building.  
PORTLAND CEMENT  
Works:  
Napa Junction  
Cal.  
COMPANY.)

San Francisco, California, Dec. 5, 1903.

The Western Fuel Company,  
San Francisco, California.

Gentlemen:—

Upon August 3rd, 1903, we delivered to you the proposed form of a contract between your Company and ourselves, which was to take effect conditionally, upon January 1st, 1904.

We now advise you that as the conditions upon which only this proposed contract was to take effect, have not been fulfilled, we hereby and herewith withdraw absolutely our offer concerning the same, and the said proposed contract is hereby absolutely annulled and cancelled.

It may be proper to add that our determination as to the cancellation and annulment of this contract is irrevocable.

In the hope that this will not interfere with the cordial business [192—66a] relations which have heretofore existed between your Company and our

own, we beg leave to sign ourselves,

Yours very truly,

STANDARD PORTLAND CEMENT COM-  
PANY.

By WILLIAM J. DINGEE,  
Vice-President.

Attest: FRANK A. LOSH.

Secretary.

(Standard Portland Cement Company, San Fran-  
cisco, Cal. Incorporated. Jan. 27, 1902.)

STANDARD PORTLAND CEMENT COMPANY.

Office

Room 45 Second Floor, Mills Bldg.  
San Francisco, Cal.

Works:

Napa Junction, Cal.

Removed to 3rd Floor, Crocker Building.

San Francisco Cal. Mar. 20, 1903.

Western Fuel Co.,  
City.

Gentlemen:

Referring to the contract between this company and yourselves concerning the sale of our cement, we beg to say that while this contract calls for the sale by you of no other domestic cement than ours, you are hereby given the privilege, wherever you find it necessary to hold trade, to handle any cement you think proper until such date as we notify you that we are ready to make shipment of our production. You will understand that this permission is not intended to allow the making of long term contracts



for other domestic cements, but only to permit of sales for immediate delivery except upon consultation with us. We will be able by the 25th of this month to notify you of the approximate date when we will be ready to make shipments.

Some questions having arisen of the return of sacks to us [193—66b] prepaid, we beg to say that our interpretation of the contract permits you to charge this return freight to the purchaser, as being included in the net price plus transportation, etc.

We beg to enclose resolution authorizing the execution of the contract with yourselves and also a copy of freight rates to various points, quoted us by the Southern Pacific Co.

Yours truly,

STANDARD PORTLAND CEMENT CO.

By C. E. HAYES.

RESOLVED, that the President and Secretary of this Company be and they are hereby authorized and empowered to enter into such contracts and agreements for the sale of the cement produced by this company as in their judgment may seem to the best interest of the company, and

FURTHER RESOLVED, that this Board does hereby ratify, approve and confirm the action of the President and Secretary in executing contracts for the sale of cement in behalf of this company with E. B. & A. L. Stone Company, dated February 27th, 1903; with Western Fuel Co. dated March 14th, 1903; and with Henry Cowell Lime and Cement Co. dated March 19, 1903."

I, Frank A. Losh, Secretary of the Standard Portland Cement Co. hereby certify the foregoing to be a full, true and correct copy of a resolution unanimously adopted at the regular monthly meeting of the Board of Directors of said Standard Portland Cement Co. held March 19, 1903;

IN WITNESS WHEREOF I have hereunto signed my name and affixed the corporate seal of the STANDARD PORTLAND CEMENT COMPANY this twenty-first day of March, Nineteen Hundred and Three.

FRANK A. LOSH,

Secretary.

(Standard Portland Cement Company. San Francisco, Cal. Incorporated. Jan. 27, 1902.)

[194—66c]

The following rates are quoted on cement in carloads, cars loaded to capacity but not less than 15 tons, from Napa Junction to points named below. Rates are in cents per ton of 2000 lbs.

To San Francisco.....	75
“ Oakland Long Wharf.....	75
“ Sacramento.....	125
“ Marysville.....	200
“ San Jose.....	125
“ Gilroy .....	310
“ Salinas.....	450
“ San Luis Obispo.....	465
“ Stockton.....	115
“ Fresno.....	405
“ Tulare.....	500
“ Bakersfield.....	500
“ Los Angeles.....	400

In addition to these rates there will be a switching charge from our works to Napa Junction, at \$1.50 per car.

The regular rate to Los Angeles is \$4.00 per ton but we have a rate of \$3.25 on one special shipment to that point.

William G. Henshaw,	William J. Dingee,	Irving A. Bachman,	Frank A. Losh,
President.	Vice-President.	Manager.	Secretary.

## STANDARD PORTLAND CEMENT COMPANY.

Telephone: Private Exchange 302.

Office: 30-34 Crocker Building.

(STANDARD

Office:

30-34 Crocker Building,

San Francisco.

PORTLAND CEMENT

Works:

Napa Junction,

Cal.

COMPANY.)

San Francisco, California Sept. 5, 1903.

Cir. Letter No. 6

The Western Fuel Company,

San Francisco, Calif.

Gentlemen:

We are compelled to notify you that the Standard Portland Cement Co. has already at this writing received orders for cement far in excess of the capacity of the company for production during the remainder of the year 1903, and it will be impossible for it to supply the cement for the orders received at this date in full during the remainder of the year, but it will have to fill said orders [195—66d] pro

rata as provided for in its contract with you.

Yours truly

STANDARD PORTLAND CEMENT CO.

By WM. G. HENSHAW,

Pres.

THIS AGREEMENT, made and entered into this Fourteenth day of March, 1903, by and between the STANDARD PORTLAND CEMENT COMPANY, a corporation, the party of the first part, and WESTERN FUEL COMPANY, a corporation, the party of the second part;

WITNESSETH:—That for and in consideration of the mutual conditions and covenants herein expressed, the party of the first part agrees to sell during the period of time terminating upon the Thirty-first (31st) day of December, 1903, to the party of the second part, the best quality of Portland cement manufactured by the party of the first part, free on board the cars at its factory in Napa County, at the price of One Dollar and Fifty cents (\$1.50) per barrel of not less than Three Hundred and Eighty pounds net weight. If the cement be ordered in barrels, to this price shall be added Fifty (50¢) cents for each barrel, with no rebate for the return of the empty barrels. If the cement be ordered in bags, the sum of Forty (40¢) cents additional will be charged per barrel, which Forty (40¢) cents will be rebated and repaid to the purchaser within Thirty (30) days after the return of the bags in serviceable condition at the rate of Ten (10¢) cents for each bag so returned with freight prepaid to the said factory.

IT IS mutually agreed that should the aggregate orders received exceed the producing capacity of the said factory, which producing capacity is estimated to be Sixteen Hundred (1600) barrels per day, the party of the first part reserves the right to fill said orders pro rate during said period of excess.

The prices for cement sold, by the party of the first part [196—66e] to other than jobbers, who have entered into the same contract and agreement with the party of the first part as is herein set forth, shall be One Dollar and Sixty-five cents (\$1.65) per barrel (with the same additional charges for packages as above set forth) for orders of not less than One Thousand (1000) barrels, and One Dollar and Seventy-five cents (\$1.75) per barrel (with the same additional charges for packages as above set forth) for orders of not less than one (1) carload and it is further agreed that said party of the first part shall not sell in lots of less than one (1) carload.

The party of the second part agrees to handle or sell no other cement of domestic manufacture than that of the party of the first part, and further agrees that its selling price in lots of One Thousand (1000) barrels, or over, shall be One Dollar and Sixty (\$1.60) cents per barrel, with cost of packages and transportation added thereto, and One Dollar and Seventy (\$1.70) cents per barrel, with like addition for cost of packages and transportation, in carload lots.

It is mutually agreed that the party of the first part shall have the right Twenty-four (24) hours after written notice has been mailed in the San



Francisco Post Office to the address of the party of the second part, to advance or reduce the selling price of its cement, and the party of the first part agrees that in case of advance or reduction in price to the party of the second part, the same advance or reduction shall be made in price to all jobbers who have, with the party of the first part, entered into a like contract with this; and the party of the first part further agrees that a relative and proportionate increase or decrease shall be preserved in all sales of cement made by the party of the first part to other users, as above set forth; it being always agreed by the party of the first part that no purchaser or consumer of its cement shall be allowed to procure the same from the party of the [197—66f] first part upon more favorable terms than are herein accorded to the party of the second part. By the party of the second part it is agreed that in case of an advance or reduction in the price of the cement manufactured by the party of the first part, it will sell such cement at the figures netting it the same profit per barrel as it will received from the price above agreed on.

It is agreed, however, by the party of the first part, that in case of a reduction in price as above provided, said party of the first part will refund to said party of the second part, the amount of said reduction for all cement purchased from the *prty* of the first part, then remaining in the hands of the party of the second part on the date of said reduction and which said cement has not been sold or contracted

to be sold by said party of the second part on or before said date of reduction.

It is mutually agreed that should the party of the first part deem it expedient to quote a special price to meet any competition or transportation upon any specially contemplated order or at any distant point it shall have the privilege of so doing twenty-four (24) hours after notifying in writing as above all of the jobbers who have with the party of the first part entered into a like contract with this and it is further agreed that said special price shall only apply to the particular order or location for which it is quoted, and shall not otherwise affect the conditions of this contract.

The party of the first part reserves the right to make such terms, conditions and agreements as it may deem fit for the sale of its production for the purpose of exportation to foreign countries.

The party of the second part agrees that upon receiving notice from the party of the first part that any cement which it may order is free on board the cars, it will forthwith transmit to the party of the first part, at its general office in the City of San [198—66g] Francisco, a promissory note for the full purchase price, duly executed by the party of the second part, without interest, and payable upon the first collection day, after fifteen days after the date of notification, or in case said promissory note is not so transmitted to the party of the first part, said party of the second part agrees to pay the full purchase price for the cement referred to in said

notification in net cash upon the first collection day succeeding the date of said notification.

IN WITNESS WHEREOF, the party of the first part, by its President and Secretary, duly authorized thereto, has caused its corporate name to be affixed, and its corporate seal to be attached hereto; and the party of the second part has in like manner, and under like authorization of its Board of Directors, caused its corporate name to be signed hereto by its President and Secretary, duly attested by the seal of the corporation.

Executed in duplicate the day and year first above written.

STANDARD PORTLAND CEMENT COMPANY.

WILLIAM J. DINGEE,

Vice-Pres.

FRANK A. LOSH,

Secretary.

(Standard Portland Cement Company, San Francisco, Cal. Incorporated Jan. 27, 1902.)

WESTERN FUEL CO.,

JOHN S. HOWARD, Pr."

Mr. DUNNE.—I next offer in evidence the document marked on the back, "Contract with Standard Portland Cement Co., Exhibit B, R. B. T., N. P.," to wit, the contract and its attached papers. I offer that in evidence on behalf of the complainant, to be transcribed into the Reporter's notes, and it will be known as "Complainant's Exhibit No. 2."

Thereupon said exhibit was received, and read in evidence in this cause, and is in words and figures, as follows, to wit: [199—66h]

**[Complainant's Exhibit No. 2.]**

“For value received the Western Fuel Company hereby sells, assigns, transfers, and sets over unto the Western Building Material Company the foregoing contract and all its rights thereunder, subject to the condition, however, that the Standard Portland Cement Company shall have the right to terminate said contract at its option in the event that John L. Howard shall at any time or for any reason cease to be the chief executive officer of the Western Building Material Company.

WESTERN FUEL COMPANY.

(Signed) JOHN L. HOWARD,

President.

(Signed) D. C. NORCROSS,

Secretary.

(Seal Western Fuel Company, San Francisco, Cal.  
Incorporated Dec. 15, 1902.)

The Standard Portland Cement Company hereby consents to the foregoing assignment.

June 30th, 1906.

STANDARD PORTLAND CEMENT COMPANY.

(Signed) IRVING A. BACHMAN,

President.

(Signed) FRANK A. LOSH,

Secretary.

(Seal Standard Portland Cement Company, San Francisco, Cal. Incorporated January 27, 1902.)

March 9, 1906.

Mess. Standard Portland Cement Co.,  
Crocker Building,  
City.

Dear sirs: We confirm the understanding as stated in your letter of March 8th concerning the amount of your and our contribution to the rebate of 10 cents payable under our joint agreement with E. B. & A. L. Stone Company.

Yours truly,

Pres'dt.

JHL.

DCN.

William J. Dingee,  
Vice-President.

Irving A. Bachman,  
Manager.

Frank A. Losh,  
Secretary.

STANDARD PORTLAND CEMENT COMPANY.

Office: 30-34 Crocker Building,  
Telephone: Private Exchange 302.

San Francisco, Cal., March 8th, 1906.

[200—66i]

Western Fuel Company,  
City.

Gentlemen: In the matter of the contract between yourselves and the E. B. & A. L. Stone Co., whereby they receive Cement from the Standard Portland Cement Company at less than the current rate; it is understood that, when your commissions shall be reduced by agreement between ourselves to ten cents per barrel, the Standard Portland Cement Company, will bear seven cents of such rebate to the Stone Co., and your Company will bear and pay the remaining three cents of said rebate.



If our understanding in this regard agrees with your own, will you kindly signify so by an exchange of correspondence?

Yours very truly,

By WILLIAM J. DINGEE, (Signed)

Vice-President.

**STANDARD PORTLAND CEMENT COMPANY.**

Original to D. C. N.

Copy to C. S. G.

The President read the following form of contract dated March 1, 1906, submitted by the Standard Portland Cement Company for the handling of their product.

Thereupon Mr. Joseph L. Schmitt offered the following Resolution which was seconded by Mr. Robert Bruce, and unanimously adopted:

RESOLVED: That the President and Secretary of this Corporation be, and they are hereby authorized and empowered to execute the foregoing contract dated March 1, 1906, with the Standard Portland Cement Company, subject to the conditions contained in the Resolution passed by the Standard Portland Cement Company, March 8, 1906, a certified copy of which is attached to said contract.

I, D. C. Norcross, Secretary of the Western Fuel Company do hereby certify that the foregoing is a true copy of a Resolution passed at a meeting of the Board of Directors of the Western Fuel Company held at San Francisco on the 19th day of March 1906.

San Francisco, Cal., Mar. 9, 1906.    [201—66j]

William J. Dingee,  
Vice-President.

Irving A. Bachman,  
Manager.

Frank A. Losh,  
Secretary.

## STANDARD PORTLAND CEMENT COMPANY.

Office :

30-34 CROCKER BUILDING

San Francisco.

Works :

Napa Junction

Telephone : Private Exchange 302.

San Francisco, Cal., March 8th, 1906.

Western Fuel Co.,

City.

Gentlemen :

In the matter of the proposed contract between the Standard Portland Cement Company and the Western Fuel Company; at a meeting of the full Board of Directors of this corporation, held this 8th day of March, 1906, the following resolution was unanimously adopted:—

‘RESOLVED that the President and Secretary be and they are hereby authorized to execute the said contract on behalf of the Standard Portland Cement Company, provided, however, that it shall be understood and agreed between the parties to said contract that the said contract may be terminated by the Standard Portland Cement Company at its option in the event that John L. Howard, now the President of the Western Fuel Company, shall, at any time or for any reason, cease to be the chief executive officer of said corporation.’

I enclose herewith the said contract duly executed by this corporation with the understanding, in accordance with the foregoing resolution of our Board of Directors, that said execution take effect and the contract becomes operative upon notice to the Standard Portland Cement Company of the acceptance by the Western Fuel Company of the provisions embodied in the foregoing resolution.

Entertaining no doubt that this modification will be acceptable to you and awaiting official notification of your Board of Directors to this effect, I am,

Yours very truly,

(Signed) WILLIAM J. DINGEE,

Vice-President,

STANDARD PORTLAND CEMENT CO.

The Secretary then read the contract, dated the 1st day [202—66k] of March, 1906, proposed to be entered into between this Company and the Western Fuel Company, regarding the sale of its product, and on motion of Director Bachmna, seconded by Director Henshaw, the following resolution was unanimously adopted:

RESOLVED: That the President and Secretary be and they are hereby authorized to execute the said contract on behalf of the STANDARD PORTLAND CEMENT COMPANY, provided however, that it shall be agreed and understood between the parties to said contract that the said contract *that the said contract* may be terminated by the STANDARD PORTLAND CEMENT COMPANY at its option in

the event that JOHN L. HOWARD, now the President of the WESTERN FUEL COMPANY, shall, at any time, or for any reason, cease to be the Chief Executive Officer of said Corporation.

I, FRANK A. LOSH, Secretary of the STANDARD PORTLAND CEMENT COMPANY, do hereby certify that the above is a full true and correct copy of a resolution passed the 8th day of March, 1906 at a meeting of the BOARD OF DIRECTORS of the STANDARD PORTLAND CEMENT COMPANY, at which a quorum was present and voted in favor of said resolution.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of the STANDARD PORTLAND CEMENT COMPANY.

(Signed) FRANK A. LOSH,

Secretary.

STANDARD PORTLAND CEMENT COMPANY.

(Seal—Standard Portland Cement Company. San Francisco, Cal. Incorporated January 27, 1902.)

#### AGREEMENT.

AGREEMENT between the WESTERN FUEL COMPANY, A corporation, and the STANDARD PORTLAND CEMENT COMPANY, a corporation.

1. The entire product of any and all factories of the Cement Company shall be sold through the FUEL COMPANY, and the FUEL COMPANY agrees to use its utmost diligence in marketing said

product, good faith in this respect on the part of the FUEL COMPANY is the essence of this contract.

2. The selling price of the Cement shall be fixed by the CEMENT COMPANY, provided an advance in price shall not affect any contracts for sale or sales for future delivery already made by the FUEL COMPANY and accepted by the CEMENT COMPANY. All prices fixed shall be f. o. b., cars at the Factory or f. o. b., vessel at the Cement Company's shipping point for the cement either in paper sacks, textile sacks or barrels and the FUEL COMPANY agrees to [203—661] sell at said fixed prices with the FUEL COMPANY'S Commissions added.

3. Five cents per sack shall be paid to the FUEL COMPANY for every usable textile sack returned to the FACTORY, freight to the factory to be paid by the CEMENT COMPANY.

4. The FUEL COMPANY shall pay for all Cement delivered during each calendar month, one-half on the thirteenth and one-half on the twenty-eighth of the succeeding calendar month after such deliveries and shall assume all risks of bad debts.

5. The FUEL COMPANY'S compensation is to be fifteen cents per barrel until the Santa Cruz Portland Cement Company begins shipments after which it is to be ten centes per barrel on all shipments made after that date on all sales made at one dollar, or more, per barrel, and on all sales made at prices below one dollar per barrel, a commission of ten per cent on the price of the bulk Cement at the Factory.

6. The quality of the Cement shall be maintained at the highest possible point of excellence and to be



of the standard exacted by the United States Government, and the CEMENT COMPANY assumes responsibility for all claims of damage arising from inferior CEMENT and will examine into and test and defend all such claims at its own cost.

7. The FUEL COMPANY agrees to sell no brands of CEMENT other than those from the Standard and Santa Cruz factories.

8. The parties hereunto agree that there is nothing in this contract that can be construed into giving the FUEL COMPANY the right to act as a jobber, that is, to buy and sell above named Cements for its own account, excepting at San Francisco and Oakland, California, but in such cases the cost to buyers shall not be greater than the total of the following items:

Bulk price at Factory.

Cost of packages.

Transportation charges.

Selling Agents' Commission.

And twelve cents per barrel to cover warehouse charges and handling costs.

9. The CEMENT COMPANY agrees to supply cement for all contracts made by the FUEL COMPANY, unless prevented by strikes, or by causes beyond its control.

10. The responsibility of the CEMENT COMPANY ceases except as provided for in paragraph six, when goods are loaded on cars or vessels in good order.

11. If the CEMENT COMPANY shall sell any

Cement otherwise than through the FUEL COMPANY, the FUEL COMPANY shall be entitled to the same commissions on all such sales as if such sales had been made by or through it.

12. This contract applies to all Cement of the Standard Portland Cement Company, whether manufactured at its present Factory or at any other factories wheresoever situated.

13. This contract shall become operative at once and shall continue [204—66m] until August 31st, 1911.

IN WITNESS WHEREOF, the parties hereto have executed this contract in duplicate as attested by the signature of their proper officers and their corporate seals hereto affixed, this first day of March, 1906.

WESTERN FUEL COMPANY.

(Signed) JOHN L. HOWARD,

President.

(Signed) D. C. NORCROSS,

Secretary.

(Seal—Western Fuel Company, San Francisco, Cal.

Incorporated Dec. 15, 1902.)

STANDARD PORTLAND CEMENT CO.

(Signed) WILLIAM J. DINGEE,

Vice-President.

(Signed) FRANK A. LOSH,

Secretary.

(Seal—Standard Portland Cement Company, San Francisco, Cal. Incorporated January 27, 1902.)”

Mr. DUNNE.—I now offer in evidence the contract with the Santa Cruz Portland Cement Co., which is marked “Exhibit C, R. B. T., N. P.” with its attached papers, which will be our Exhibit No. 3 on behalf of the complainant, and will be transcribed into the reporter’s notes.

Thereupon said exhibit 3 was received and read in evidence in this cause, and is in words and figures as follows, to wit:

**[Complainant’s Exhibit No. 3.]**

“For values received, the Western Fuel Company hereby sells, assigns, transfers and sets over unto the Western Building Material Company, the foregoing contract and all its rights thereunder, subject to the condition, however, that the Santa Cruz Portland Cement Company shall have the right to terminate said contract at its option in the event that John L. Howard shall at any time or for any reason cease to be the chief executive officer of the Western Building Material Company.

WESTERN FUEL COMPANY,

(Signed) JOHN L. HOWARD,

President.

(Signed) D. C. NORCROSS,

Secretary.

(Seal—Western Fuel Company, San Francisco, Cal.

Incorporated Dec. 5, 1902.) [205—66n]

The Santa Cruz Portland Cement Company hereby consents to the foregoing assignment.

June 30th, 1906.

SANTA CRUZ PORTLAND CEMENT  
COMPANY,

(Signed) IRVING A. BACHMAN,

Vice-Pres.

(Signed) FRANK A. LOSH,

Secretary.

(Seal—Santa Cruz Portland Cement Company, San  
Francisco, Cal. Incorporated June 2, 1905.)

March 9, 1906.

Mess. Santa Cruz Portland Cement Co.,  
Crocker Building,  
City.

DEAR SIRS:\*

To your letter of March 6th which states the understanding reached yesterday regarding our compensation in the matter of cement to be furnished under your specific contract with the Southern Pacific Company.

We confirm.

Yours truly,

JLH.  
DCN.

Pres'dt.

William J. Dingee,  
Vice-President.

Irving A. Bachman,  
Manager.

Frank A. Losh,  
Secretary.

SANTA CRUZ PORTLAND CEMENT  
COMPANY.

Office :

30-34 Crocker Building,  
San Francisco.

Works :

Davenport, Cal.

San Francisco, March 8, 1906.

Western Fuel Company,  
City.

Gentlemen :

The Santa Cruz Portland Cement Company having agreed to furnish the Southern Pacific Company a maximum of 25,000 Bbls. of Cement per annum, during the first five years of its operation, it is understood that the Western Fuel Company shall receive, for any [206—660] and all of said 25,000 Bbls. of cement per annum, which may be so furnished, one-half of its regular selling commission.

If our understanding in this regard agrees with your own, will you kindly signify so by an exchange of correspondence?

Yours very truly,

(Signed) WILLIAM J. DINGEE,

President,

SANTA CRUZ PORTLAND CEMENT  
COMPANY.

E.

Original to D. C. N.

Copy to C. S. G.



The president read the following form of contract dated March 1, 1906, submitted by the Santa Cruz Portland Cement Company for the handling of their product. ~

Whereupon Mr. Joseph L. Schmitt offered the following resolution, which was seconded by Mr. Robert Bruce and unanimously adopted:

RESOLVED: That the President and Secretary of this Corporation be, and they are hereby authorized and empowered to execute the foregoing contract dated March 1st, 1906, with the Santa Cruz Portland Cement Co. subject to the conditions contained in the resolution passed by the Santa Cruz Portland Cement Company, March 8, 1906, a certified copy of which is attached to said contract.

I, D. C. Norcross, Secretary of the Western Fuel Company, do hereby certify that the foregoing is a true copy of a Resolution passed at a meeting of the Board of Directors of the Western Fuel Company held at San Francisco, on the 9th day of March, 1906.

San Francisco, Cal., March 9, 1906.

.....,

William J. Dingee,  
Vice-President.

Irving A. Bachman,  
Manager.

Frank A. Losh,  
Secretary.

SANTA CRUZ PORTLAND CEMENT  
COMPANY.

Office:

30-34 Crocker Building,  
San Francisco.

Works:

Davenport, Ohio.

San Francisco, March 8, 1906. [207—66p]

Western Fuel Co., City.

Gentlemen:

In the matter of the proposed contract between the Santa Cruz Portland Cement Company and the Western Fuel Company: at a meeting of the full Board of Directors, of this corporation, held this 8th day of March, 1906, the following resolution was unanimously adopted—

‘RESOLVED that the President and Secretary be and they are hereby authorized to execute the said contract on behalf of the Santa Cruz Portland Cement Company, provided, however, that it shall be agreed and understood between the parties to said contract that the said contract may be terminated by the Santa Cruz Portland Cement Company at its option, in the event that John L. Howard, now the President of the Western Fuel Company, shall, at any time or for any reason, cease to be the chief executive officer of said corporation.’

I enclose herewith the said contract duly executed

by this corporation with the understanding, in accordance with the foregoing resolution of our Board of Directors, that said execution takes effect and the contract becomes operative upon notice to the Santa Cruz Portland Cement Company of the acceptance by the Western Fuel Company, of the provision embodied in the foregoing resolution.

Entertaining no doubt that this modification will be acceptable to you and awaiting official notification of your Board of Directors to this effect, I am,

Yours very truly,

(Signed)   WILLIAM J. DINGEE,

President,

SANTA CRUZ PORTLAND CEMENT  
COMPANY.

The Secretary then read the contract dated the first day of March, 1906, proposed to be entered into between this company and the Western Fuel Company, regarding the sale of its product, and on motion of Director Morrison, seconded by Director Losh, the following resolution was unanimously adopted:

RESOLVED: that the President and Secretary be and they are hereby authorized to execute the said contract on behalf of the Santa Cruz Portland Cement Company, provided however, that it shall be agreed and understood between the parties to said contract that the said contract may be terminated [208—66q] by the Santa Cruz Portland Cement Company at its option, in the event that John L. Howard, now the President of the Western Fuel Com-

pany, shall, at any time or for any reason, cease to be the chief executive officer of said corporation.

I, Frank A. Losh, Secretary of the Santa Cruz Portland Cement Company, do hereby certify that the above is a full, true and correct copy of a resolution passed the 8th day of March, 1906, at a meeting of the Board of Directors of the Santa Cruz Portland Cement Company, at which meeting a quorum was present and voted in favor of said resolution.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of the Santa Cruz Portland Cement Company.

(Signed) FRANK A. LOSH, Sec'y.

SANTA CRUZ PORTLAND CEMENT  
COMPANY.

(Santa Cruz Portland Cement Company—Seal—  
San Francisco, Cal. Incorporated June 2,  
1905.)

#### AGREEMENT.

AGREEMENT between the WESTERN FUEL COMPANY, a corporation, and the SANTA CRUZ PORTLAND CEMENT COMPANY, a corporation.

1. The entire product of any and all factories of the Cement Company shall be sold through the FUEL COMPANY and the FUEL COMPANY agrees to use its utmost diligence in marketing said product, good faith in this respect on the part of the FUEL COMPANY is the essence of this contract.

2. The selling price of the Cement shall be fixed by the CEMENT COMPANY, provided and advance

in price shall not affect any contracts for sales or sales for future delivery already made by the FUEL COMPANY and accepted by the CEMENT COMPANY. ALL prices fixed shall be f. o. b. cars at the Factory, or f. o. b. vessel at the Cement Company's shipping point, for the Cement either in paper sacks, textile sacks or barrels and the FUEL COMPANY agrees to sell at said fixed prices with the FUEL COMPANY'S commissions added. [209—66r]

3. Five cents per sack shall be paid to the FUEL COMPANY for every usable textile sack returned to the FACTORY, freight to the factory to be paid by the CEMENT COMPANY, settlements for same to be made semi-annually.

4. The FUEL COMPANY shall pay for all cement delivered during each calendar month, one-half on the thirteenth and one-half on the twenty-eighth of the succeeding calendar month after such deliveries and shall assume all risks of bad debts.

5. The FUEL COMPANY'S compensation is to be ten cents per barrel on all sales made at one dollar or more per barrel, and on all sales made at prices below one dollar per barrel, a commission of ten per cent on the price of the bulk cement at the factory.

6. THE quality of the cement shall be maintained at the highest possible point of excellence and to be of the standard exacted by the United States Government, and the CEMENT COMPANY assumes responsibility for all claims of damage arising from inferior cement and will examine into and



test and defend all such claims at its own cost.

7. The FUEL COMPANY agrees to sell no brands of cement other than those from the Santa Cruz and Standard factories.

8. The parties hereunto agree that there is nothing in this contract that can be construed into giving the FUEL COMPANY the right to act as a jobber, that is, to buy and sell above named cements for its own account, excepting at San Francisco and Oakland, California, but in such cases, the cost to buyers shall not be greater than the total of the following items:

Bulk price at Factory.

Cost of packages.

Transportation charges.

And twelve cents per barrel to cover warehouse charges and handling costs.

9. The CEMENT COMPANY agrees to supply cement for all contracts made by the FUEL COMPANY, unless prevented by strikes or by causes beyond its control. [210—66s]

10. The responsibility of the CEMENT COMPANY ceases except as provided in Paragraph Six when goods are loaded on cars or vessels in good order.

11. If the CEMENT COMPANY shall sell any Cement otherwise than through the FUEL COMPANY, the FUEL COMPANY shall be entitled to the same commissions on all such sales as if such sales had been made by or through it.

12. This contract applies to all cement of the Santa Cruz Portland Cement Company, whether

manufactured at its present factory or at any other factories wheresoever situated.

13. This contract shall become operative September 1st, 1906, or whenever the factory shall begin shipments, and shall continue until August 31st, 1911.

IN WITNESS WHEREOF, the parties hereto have executed this contract in duplicate, as attested by the signatures of their proper officers, and their corporate seals hereto affixed this first day of March, 1906.

WESTERN FUEL COMPANY,  
By JOHN L. HOWARD, (Signed)  
President.

By D. C. NORCROSS, (Signed)  
Secretary.

(Seal—Western Fuel Company. San Francisco, Cal. Incorporated, Dec. 15, 1902.)

SANTA CRUZ PORTLAND CEMENT  
COMPANY.

By WILLIAM J. DINGEE, (Signed)  
President.

By FRANK A. LOSH, (Signed)  
Secretary.

(Seal—Santa Cruz Portland Cement Company—San Francisco, Cal. Incorporated June 2, 1905.) [211—66t]

The MASTER.—Very well. They will be received in evidence and the Reporter will copy them into the record.

(Testimony of John L. Howard.)

The WITNESS.—(Continuing.) The rate of compensation under these contracts differed at different times. In the early contract with the Standard Company, the rate of compensation was 15 cents per barrel. At the time of discussing the contract with the Santa Cruz Co. we voluntarily offered to take 10 cents per barrel for the combined output of the two plants. The contracts were executed on that basis. After the Santa Cruz plant had been operating for a year, the quality of the cement turned out to be so uniformly bad that it was disastrous to us, and at a discussion in the early part of 1908, Mr. Dingee adopted a suggestion which I made that for the first 750,000 barrels, which was the estimated annual capacity of the Standard plant, we should be paid 15 cents per barrel, and for the balance of the joint output we would get 10 cents. When the Standard Portland Cement Co. became the Standard Portland Cement Corporation, no change was made in the rate of compensation for marketing the product.

In transacting business with these various corporations, the Standard Portland Cement Company and the Standard Portland Cement Corporation and the Santa Cruz, I did my business chiefly with Mr. Dingee; sometimes in his absence with Mr. Bachman, and sometimes with Mr. McGary, but generally with Mr. Dingee. I do not know who organized either the Standard Portland Cement Company or the Standard Portland Cement Corporation. I do not know who were the incorporators. I knew that

(Testimony of John L. Howard.)

Mr. Dingee and Dr. Bachman were the chief factors in bringing about the incorporation. Further than that I do not know. Mr. Dingee and Dr. Bachman organized the Santa Cruz Company; further I know not. As to whether I was interested in the floatation of the Santa Cruz Company, we helped to place some of the bonds, through our office, but I forget what quantity. I did not receive any compensation [212—67] for that service, and I do not remember how many bonds I placed. I think that there was no contract of any sort between me or my companies and the Santa Cruz plant in the matter of their bond floatation.

I met Dingee first through hiring a house from him in 1881, but I never had any business with him until 1903, after we started to sell their cement. My business relations with him then were purely in connection with his cement enterprise. Those business relations were more or less intimate as they had to be through our selling their product. We resigned the selling agency for Mr. Dingee's cement companies in December, 1908. Mr. Dingee and myself had no social relations. Aside from the fact that we were selling agents for the cements companies, I bought some of the bonds of his Atlantic plant that he was starting in the east. I think that this was in 1907. I was on the plant with Dr. Bachman on the morning of the earthquake. I remember that. They floated a company and I bought some of the bonds, just the same as anybody else did. I think it was during 1907 that I took these bonds. I sub-

(Testimony of John L. Howard.)

scribed for our company for nineteen of the bonds of the North Western Portland Cement Company.

Q. Was there any special reason why you should subscribe for these nineteen bonds, that you recollect?

A. Except that we were expecting to have the sales agency of the company, and we were willing to assist. There was no other reason that I can recollect except that, why we subscribed for those nineteen bonds.

Q. Is it not a fact that those nineteen bonds were subscribed for by you to assist Mr. Dingee in acquiring control of the stock of the Bellingham Bay and British Columbia Railway?

A. I do remember now that at the time he was negotiating for the control of the Cornwall interests in the Bellingham Bay Company, he said he was short some money, and I think that [213—68] our subscription was made at that time to help him make that payment. I recollect that now. Aside from these facts, and from my being sales agent, there were no other facts in my business relations with Mr. Dingee. I never personally loaned any money to Dingee.

Q. Did any company of which you were an officer loan any money to Mr. Dingee?

A. At the first of October, 1908, we made to him what was the first real loan. During the summer of 1908, when he was becoming pressed more or less for money, we sometimes anticipated the due dates for payment—twice a month, we paid the cement



(Testimony of John L. Howard.)

companies, on the 13th and the 28th, under our agency contract. But we did not aim to let him get into our debt, but we sometimes anticipated the payments that were due from us. And on the 1st of October, 1908, I remember before going to British Columbia, he was in great stress for money, and we advanced him \$75,000 and he left a mortgage, I think in my name, for some property at Redwood City in this State; and while I was in the north that mortgage was changed into a deed, but I did not know that until I came back. Aside from anticipating payments under the agency contracts, and aside from making this loan of \$75,000, there were no other facts in my business relations with Mr. Dingee that I can recollect excepting my connection with these promotion shares of the Northwestern Company. I never at any time stood good for any of Mr. Dingee's debts, nor did I ever seek to protect him against any of his creditors. The facts in connection with a letter which I wrote to the Metropolis Trust Company are these: After my return from British Columbia, I found that a deed had been given by Mr. Dingee to our Mr. Smith in my name, for this Redwood property, in the matter of this same loan of \$75,000 to which I refer. I called on Mr. Dingee, who *he* was ill in bed [214—69] at the Fairmount Hotel, and told him that I wanted him to give some declaration of trust in regard to this property, so that if anything happened to me it would not be mixed up with my affairs. We discussed it and he agreed with me. Well, I saw Mr.

(Testimony of John L. Howard.)

Young, the secretary of the company, and asked him if he would prepare the papers. He was a lawyer in Mr. Dingee's office. There was some delay about it, and I telephoned him and he said he had been too busy. Then I went to Mr. Willard of Page & McCutcheon, and he prepared a letter setting forth the terms under which I held this property. I think it was on the 9th day of November that Mr. Dingee came down with an acknowledgment of that letter, and it was during that visit that he expressed his distress about a \$50,000 which had been negotiated with the cement company, I think by Mr. Young, with Mr. Dingee's indorsement on the note. They were pressing him. I suggested to him whether or not he could not temporize with them and arrange that the note should be protected out of the sale of this property after our claims had been satisfied. At his suggestion I dictated a letter addressed to them, and gave it to him. The concluding paragraph, I remember, was that upon the authority of Mr. Dingee I would do this, that is, pay them this \$50,000 out of any proceeds of the sale of this property that might be left after the satisfaction of our claims. I think you have a copy of that letter; it is dated November 9th, 1908.

Q. Is this a correct copy of the letter in question (handing)?     A. Yes, I think it is.

Mr. DUNNE.—I offer to read this in evidence.

Mr. OLNEY.—Are you sure that it is a correct copy, Mr. Howard?

A. I think it is, as nearly as I can remember the

(Testimony of John L. Howard.)

[215—70] contents of it. I have not seen it since.

Mr. OLNEY.—No objection.

Thereupon said letter referred to by the witnesses was received and read in evidence in this cause, and is in words and figures as follows, to wit:

“November 12, 1908.

Metropolis Savings & Loan Society,  
San Francisco, California.

Dear Sirs:—

This is to certify that William J. Dingee has deeded to me, (which deed is on record at Redwood City) a tract of land at Redwood City said to comprise 300 acres which is now being subdivided, and which it is said Baldwin & Howell have appraised at a market value of \$600,000.

This land is held by me as security for advances made and to be made by the Western Fuel Company and Western Building Material Company and John L. Howard to the Santa Cruz Portland Cement Company, the Standard Portland Cement Corporation and William J. Dingee, and we think these advances will not exceed \$200,000.

Upon the authority of William J. Dingee, from whom I received this title, I will agree to protect any moneys that may be due you in excess of the claims of the parties above referred to.

Yours truly,

JOHN. L. HOWARD.”

WITNESS.—(Continuing.) This letter was delivered, as I afterwards learned from Mr. Dingee,

(Testimony of John L. Howard.)

to the Metropolis people, who made claim on me for the protection, and I turned the matter over to Mr. Warren Olney and we declined to recognize this because Mr. Dingee never gave the authority to do it. Afterwards this property was deeded by me to Mr. William H. Crocker, upon his giving me a bond of indemnity to protect me against the Metropolis people.

I often had conversations with Mr. Dingee concerning his affairs as to cement operations, from along about 1903 down. I never individually loaned any money to Mr. Dingee, but we loaned that \$75,000 to the cement company—this loan was made at our office, in consultation between myself and the vice-president and the treasurer. The lender was the Western Building Material Co.

I was introduced to Dr. Bachman in December, 1902, at Napa Junction when the Standard Portland Cement Company there was about [216—71] being finished. Since that time, I did not come much in contact with Dr. Bachman except during Mr. Dingee's absence, and then he was in the saddle in the cement company's office and I had to talk with him about whatever was necessary to discuss with relation to the marketing of the product. I had no social relations whatever with Dr. Bachman, but I did discuss the business of the Northwestern Portland Cement Company with him. I had a speaking acquaintance merely with Mr. McGary prior to the time when he came to be vice-president of these cement companies; after that I saw more or less of

(Testimony of John L. Howard.)

him during the absence of Mr. Dingee and Dr. Bachman. Occasionally he happened to be in charge here. Prior to those times I don't exactly know what had been Mr. McGary's occupation. I think he was vice-president of the Contra Costa Water Company at one time. He had been associated with Mr. Dingee, but I do not know how long, nor do I know what was the general nature of the relations between Mr. McGary and Mr. Dingee. Thomas R. Stockett is the manager of the mines of the Western Fuel Company at Nanaimo. I have known him 12 or 15 years altogether. I have known him very well; and he has been in the employ of our company since 1904. I do not know Mr. Rand. I know Mr. Graham; he is the superintendent of our company at Nanaimo; and I have known him since 1904. I have known Mr. Foster Young since he came to be secretary of the cement companies. I do not know for whom Thomas R. Stockett was trustee. Mr. Stockett and Mr. Graham obtained from the Northwestern Portland Cement Company bonds through our office. I think Mr. Rand obtained his from Evans, Coleman & Evans, which came through our office. The plant of the Standard Portland Cement Company was at Napa Junction, and after that company became the Standard Portland Cement Corporation, it still maintained its plant at Napa Junction, which is in Napa County in the State of California. I do not know who organized the Northwestern Portland Cement Company. As to who controlled these various corporations, the office control [217—72] was



(Testimony of John L. Howard.)

in the hands of Dr. Bachman and Mr. Dingee, and their associates, but I do not know what stock ownership they held in any of them. The executive control was in their hands and in all my business transactions I dealt with them. The only site that the Northwestern Portland Cement Company had was at [218—72a] Kendall, in Whatcom County, Washington. The Northwestern Portland Cement Company and the Standard Portland Cement Company and Corporation were independent corporations. So far as I know, up to May, 1908, there had been no relations, contractual or otherwise, between the Standard Portland Cement Corporation and the Northwestern Portland Cement Company that I knew of.

Q. Do you know who promoted the Northwestern Company?

A. Well, I should say Mr. Dingee and Dr. Bachman did.

Q. Do you know anything definite on that subject, or is that a supposition of yours?

A. Oh, it is more than a supposition, I think it was a fact.

Q. They stated as a fact that they did promote that Company? A. Yes.

Q. Did anyone assist them in the promotion of that company, if you know?

A. Do you mean other than myself?

Q. Well, did you?

A. I helped place some of the bonds.

Q. Yes, but in the promotion of the company

(Testimony of John L. Howard.)

proper? A. I know of no one else.

Q. Except Mr. Dingee and Dr. Bachman?

A. I know of no one else. As to what led to the promotion of that company: after we became connected with them in the selling business—as you know I was in the habit of going frequently to Puget Sound—we were marketing a good deal of the cement there, and I advised Dingee and Bachman to consider the location of a plant in that country, partly to take care of a local market and partly as an insurance to their investments in California. By the phrase, “as an insurance to their investments in California,” I mean, to prevent the dumping of cement [219—73] from any northern mill into their market here by having a plant on the spot. It was of strategic importance as well as economical importance to have a plant in the north, and as incidental to that, it was also advisable to have that northern plant established as promptly as possible. The conversations first began away back in 1904. I knew of the connection of Evans, Coleman & Evans with this property of Balfour-Guthrie & Co. which has been referred to; and knowing that they had a disposition to sell, Mr. Percy Evans came down to San Francisco at my instance and met Messrs. Dingee and Bachman at lunch with me and a sort of proposal was discussed, but the terms suggested by Messrs. Dingee and Bachman were not entertainable by Mr. Evans, and he left the interview with more or less disgust. The thing remained quiet then until the spring of 1906, with more or less agitation on my part. Then I was com-

(Testimony of John L. Howard.)

missioned by them to try to find some properties suitable for cement making on Puget Sound. I enlisted the interest of some friends up there to keep their eyes opened for some lime deposits, and finally, in June, 1906, Mr. Evans telegraphed me that he had a man named Riedle that could take us to see a lime ledge. I went to Vancouver, and Mr. Evans and I went up to Sumas on the line of the Bellingham Bay and British Columbia Railway, and we three went to Kendall and looked at a lime deposit that was owned by Reidle. I returned to Vancouver and telegraphed to Mr. Dingee that I had found a lime deposit and to send Dr. Bachman to examine it. In a few days—I think within a week—Bachman came to Vancouver. Mr. Evans, Reidle and myself met him there and went with him, and he spent a day on the property, passed it, and authorized that it be purchased. He also authorized me to purchase the farm of Peter Zender, which lay at the bottom of the hill, on the top of which hill this limestone ledge was exposed. He left for San Francisco, I think, within twenty-four hours [220—74] after his arrival in the north. There was more or less timber scattered over that hill. Then, in looking over the maps at Bellingham I found that the line of Peter Zender and Reidle did not meet, that there was a strip of 80 acres of land intervening which had a strategic value as a right of way to bring the material from the quarry if it was opened up on the Riedle claims down to the site for the factory, and learning that that land had not been taken up, I consulted a land office lawyer

(Testimony of John L. Howard.)

in Seattle, and at his instance filed on it as a stone and timber claim, in my own name, he preferring that course to my acting as agent for Dr. Bachman. I had a world of trouble with that claim. The general character of the trouble was that some land-jumpers there put in adverse claims and I had to go to Seattle a couple of times, and the case was tried there and dismissed by the land office officials, and then it was referred by the attorney for the other side to the Commissioner of the General Land Office, and it had to wait its turn there, and finally a decision came down in favor of my locations; then there was a threat that it would be carried to the Secretary of the Interior—the Court of last resort—but finally I got notice that a patent had been issued to me. The attorney who appeared for me in this litigation concerning this claim was a land office lawyer of Seattle by the name of Randolph, and I consulted with Mr. C. W. Howard in Bellingham, of the firm of Newman & Howard; this is the same C. W. Howard who was subsequently made resident agent for the State of Washington for the Northwestern Portland Cement Company at my suggestion to Mr. Morrision when Mr. Morrision was preparing the papers. After getting the patent I was, of course, perfectly free to deal with the property. Prior to that time I had not been. At the time of the purchase of these bonds by Mr. Dingee of the Standard Company, I told him about this piece of land that still stood in my name, [221—75] and he took it in at what I roughly figured up was the cost to me. In other words, there

(Testimony of John L. Howard.)

was the same amount of land in this piece as there was in the Reidle piece; he paid \$6,000.00 for that piece, and I told him that as nearly as I could calculate it my expenses were about \$1,800.00. I do not remember what were the items that made up the \$1,800.00; but I made a deed to the Standard Portland Cement Corporation and attached to it all the evidence I then had as evidence of title, which was the receipt of the Land Office in Seattle. Afterwards, when I got notice of the patent I went to Mr. Young and borrowed the tax receipt in order to get the patent, and when I received the patent I turned the patent in to Mr. Young. That is the end of that. I have not now any source of information by which I can advise you as to the items which made up this \$1,800.00. After that, my recollection is that in the course of time after Dr. Bachman and Mr. Dingee got ready, I think Mr. Morrision was the attorney for them, there was organized the Puget Sound Portland Cement Company. I think they abandoned that name and reorganized it under the name of the Northwestern Portland Cement Company.

Q. Did you take any further interest in the matter after that?

A. During the time I was visiting the north, and getting these papers together for them and paying out money for them when that work was over my work ceased in that respect. I think this is the patent to which I have been referring. I delivered it to Mr. Young. He has had possession of it since I got it.



Mr. DUNNE.—Any objection to this, Mr. Olney?

Mr. OLNEY.—No.

Mr. DUNNE.—I offer in evidence as “Complainant’s Exhibit 4,” the patent from the United States of America to John L. Howard dated May 14, 1909; and I will ask the Reporter to transcribe that into his notes, and the indorsements thereon, as an [222—76] exhibit on behalf of the complainant.

And said exhibit was thereupon received and read in evidence in this cause, and is in words and figures as follows, to wit:

**[Complainant’s Exhibit No. 4.]**

“THE UNITED STATES OF AMERICA.

To All to Whom These Presents shall Come, Greeting:

Certificate No. 21449.

WHEREAS, JOHN L. HOWARD, has deposited in the General Land Office of the United States a Certificate of the Register of the Land Office at Seattle, Washington, whereby it appears that full payment has been made by the said *Jon* L. Howard according to the provisions of the Act of Congress on the 24th of April, 1820, entitled ‘An Act making further provision for the sale of the Public Lands,’ and the acts supplemental thereto, for the west half of the southwest quarter of Section twenty-three, in Township forty north of Range five east of the Willamette Meridian, Washington, containing eighty acres, according to the Official Plat of the survey of the said lands, returned to the General Land Office by the Surveyor General, which said Tract has been

purchased by the said John L. Howard:

NOW KNOW YE, That the UNITED STATES OF AMERICA, in consideration of the premises, and in conformity with the several Acts of Congress in such case made and provided, HAVE GIVEN AND GRANTED and by these presents DO GIVE AND GRANT, unto the said John L. Howard, and to his heirs the said Tract above described; TO HAVE AND TO HOLD the same, together with all the rights, privileges, immunities, and appurtenances of whatever nature, thereunto belonging, unto the said John L. Howard and to his heirs and assigns forever; subject to any vested and accrued water rights for mining, agricultural, manufacturing, or other purposes, and rights to ditches, and reservoirs used in connection with such water rights, as may be recognized and acknowledged by the local customs, laws, and decisions of courts, and also subject to the right of the proprietor of a vein or lode to extract and remove his ore therefrom, should the same be found to penetrate or intersect the premises hereby granted, as provided by law; and there is reserved from the lands hereby granted, a right of way thereon for ditches or canals constructed by the authority of the United States.

In testimony whereof, I, William H. Taft, President of the United States of America, have caused these letters to be made Patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand, at the City of Washington, the fourteenth day of May, in the year of our Lord one thousand nine hundred and nine and of the In-

(Testimony of John L. Howard.)

dependence of the United States the one hundred and thirty-third.

By the President: WM. H. TAFT.

By M. W. YOUNG, Secretary.

H. W. SANFORD,

Receiver of the General Land Office.

Patent Number 61534.

No.

Received for record this 19 day of June, 1909, at 9 A. M., and recorded [223—77] at request of Newman & Howard, in Vol. 3 of Pat. Records, at Whatcom County, Washington, at page 113.

ALEX. VAN WYCK,

County Auditor.

By WILL D. WALLACE,

Deputy Auditor.

Compared L.E.K. M.T. 1/00 Pd.”

Q. Is this the deed to which you have made reference?

A. Yes; that is my signature. I think it is the deed; yes, and that is the signature of my wife also.

Mr. DUNNE.—I offer in evidence as “Complainant’s Exhibit 5,” a deed from John L. Howard and Helen L. Howard, his wife, parties of the first part, to the Standard Portland Cement Corporation, party of the second part, of the same property referred to in the patent which has just been referred to, and ask the reporter to transcribe it into his notes as an exhibit on behalf of the complainant.

Thereupon said exhibit No. 5 was received and read in evidence in this cause, and is in the words and figures as follows, to wit:

**[Complainant's Exhibit No. 5.]**

“THIS INDENTURE, made the thirtieth day of April, one thousand nine hundred and eight, BETWEEN John L. Howard and Helen L. Howard, his wife, the parties of the first part, and the Standard Portland Cement Corporation, the party of the second part, WITNESSETH: That the said parties of the first part, in consideration of the sum of Eighteen Hundred dollars, gold coin of the United States of America, to them in hand paid by the party of the second part, the receipt whereof is hereby acknowledged, do by these presents grant, bargain and sell, unto the said party of the second part, and to its heirs and assigns forever; all that certain lot, piece or parcel of land situate in the County of Whatcom, State of Washington and bounded and described as follows, to wit:

West half of South West quarter of Section No. twenty-three in Township No. forty, North of Range No. five East Willamette Meridian.

Together with the tenements, hereditaments and appurtenances thereunto belonging, or appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof.

TO HAVE AND TO HOLD, the said premises, together with the appurtenances, unto the said party of the second part, and to its heirs and assigns forever.

(Testimony of John L. Howard.)

IN WITNESS WHEREOF, the said parties, of the first part have hereunto set their hands the day and year first above written.

JOHN L. HOWARD.

HELEN L. HOWARD.

Signed and delivered in the presence of

D. C. NORCROSS.

M. V. COLLINS. [224—77a]

State of California,

City and County of San Francisco,—ss.

I, M. V. Collins, Notary Public, do hereby certify that on this 4th day of May, 1908, personally appeared before me John L. Howard and Helen L. Howard (his wife), to me known to be the individuals described in and who executed the within instrument, and acknowledged that they signed and sealed the same as their free and voluntary act and deed, for the uses and purposes therein mentioned.

Given under my hand and official seal, this 4th day of May, A. D. 1908.

[Seal]

M. V. COLLINS,

Notary Public in and for the City and County of San Francisco, State of California.

My Commission will expire April 12, 1909.”

“Endorsed: Deed. John L. Howard et ux. to Standard Portland Cement Corporation.”

WITNESS.—(Continuing.) As to how this deed came to be drawn in favor of the Standard Portland Cement Corporation rather than the Northwestern Portland Cement Company, I was selling to the same



(Testimony of John L. Howard.)

party, the same corporation, by arrangement with Mr. Dingee, that bought the bonds of the Northwestern, that is the explanation of that. When the Northwestern Portland Cement Company was being projected, I learned generally what its financial scheme was. Mr. Dingee was my source of information and he said it was to be 2,000,000 of bonds and 5,000,000 of stock; and he proposed to give 200% of stock and a bonus in the beginning with each bond; and then he and Dr. Bachman changed their plan [225—77b] during the period of consideration and cut the bonus to 100%. I could not tell how frequently I discussed these matters with Mr. Dingee. Frequently we would luncheon together to discuss the selling market and these things would come up in the course of conversation, sometimes incidentally and sometimes purposely. I did not have special meetings with him for the purpose of discussing the financial scheme of the Company. I recollect nothing more than in that general way what Mr. Dingee said concerning the financial scheme of the Northwestern Company. It was part of Mr. Dingee's plan to establish a plant at Kendall. He had a comprehensive scheme for the control of the cement business of the coast, of which the Northwestern was to be one of the units, to be gathered together ultimately under the Standard Portland Cement Corporation.

Q. What was the purpose of the bond issue of the Northwestern Company?

A. Well, I assume that it was for the construction of the plant, but I was not a party to the arrange-

(Testimony of John L. Howard.)

ment or the capitalization scheme of organization. I did not have anything to do with that at all. As to my having anything to do with the placing of the bonds, some of the people whom I knew and who knew that I was connected with the cement companies, knowing of the success of the Santa Cruz, from the investors' point of view, for example, there were 200% of stock given out as a bonus and before the factory started the stock was worth \$70.00 a share. Evans, Coleman & Evans spoke to me from the very beginning. Mr. Evans was with me in nearly all my trips to Kendal and he was quite well posted as to what was going on, and his firm wanted some; and when Mr. Stockett heard of the thing he wanted some and spoke for some, and spoke for Mr. Graham, and Mr. Sidney Smith wanted some of them, and I think altogether there were \$95,000 or \$100,000 of those bonds bespoken. [226—78]

Q. How was it these people applied to you in that behalf because of the success of the Santa Cruz Company?

A. Well, it was a good speculative thing, and the bonds on the property were a first lien and the stock was a gift.

Q. What I want to get at is—

A. (Intg.) You mean, why did they come to me instead of going to the company?

Q. Yes. What was the point of connection? Why should they come to you on the matter of these bonds because of the success of the Santa Cruz Company a Dingee Company?

(Testimony of John L. Howard.)

A. Well, they wanted some of the bonds of the Northwestern. Dingee and Bachman were a success for the time. It is the fact that these people knew that I was associated with Dingee and Bachman—in the selling business. They knew that I was connected with the people who were putting through the Northwestern Company.

No plant was ever completed at Kendall. No factory was ever built there. They cleared off about 40 to 50 acres of land and built a spur track in. This spur track was about a mile long and ballasted all the way.

Q. What else was done?      A. Cleared the land.

Q. Anything else?

A. That is all. There was no cement making machinery put on the Kendall site. There were a couple of logging engines there pulling stumps. I do not know whether any machinery was ordered for the Kendall site, except on the authority of Mr. Dingee and Mr. Bachman. It never got there to my knowledge. The Northwestern Portland Cement Company never turned out a pound of cement. Its bonds are not listed anywhere that I know of.

I received 9,000 shares of the stock of the Northwestern [227—79] Portland Cement Company in the early part of 1907 from Mr. Dingee's office. As to the circumstances under which Mr. Dingee gave me those 9,000 shares, in the beginning of 1906 when he first took into consideration my talk for the establishment of a plant he resolved to put one in if the deposits could be found, the Balfour-Guthrie com-

(Testimony of John L. Howard.)

pany had deposits there already, they owned them on the south side of the valley—I mean the ones that Mr. Evans referred to, and I was advised by Mr. Dingee to negotiate or try to negotiate with Balfour-Guthrie & Company for the purchase of their property; I knew both of them and they did not know each other. I made Balfour-Guthrie & Company, on Mr. Dingee's behalf, an offer. They came back with a counteroffer, which he declined, and then as no business could result from that negotiation I followed up the deposits which were reported by Mr. Evans. I have detailed the result of that. During these conversations Mr. Dingee voluntarily offered that if and when a company and a plant was established, I should share equally with him and Dr. Bachman in whatever promotion share profits there might be.

Q. That statement, then, was made by Mr. Dingee during the time of the Balfour-Guthrie negotiations, and before the Northwestern Company had been projected? A. Upon organization.

Q. Now, is it not the fact, Mr. Howard, that these 9,000 shares which you received were a voluntary offer by Mr. Dingee in the early part, not of the Balfour-Guthrie offer, but in the early part of the Northwestern Portland Cement Company's affairs under which you were to share equally with Dingee and Bachman in whatever promotion share profits there might be?

A. The voluntary offer was made by Mr. Dingee during the currency of negotiation with Balfour-

(Testimony of John L. Howard.)

Guthrie & Company, and were renewed by him after those negotiations failed. [228—80]

Q. I will ask you if you testified as follows, upon this subject matter and also whether this is not the only testimony which you gave upon this subject matter, when giving your testimony as a witness upon deposition, before the notary, Mr. Treat, on January 6th, 1911, in the Crocker Building, in San Francisco, namely:

“Q. Why did you receive those shares?

A. A voluntary offer on the part of Mr. Dingee in the early part of the Northwestern affairs under which I was to share equally with him and Dr. Bachman in whatever promotion share profits there might be.”

Did you so testify?      A. I did.

Q. Was that testimony true?

A. That testimony was true, but I did not segregate in that the negotiations. I did not refer in that testimony there to the negotiations that had just previous to this thing been going on with Balfour-Guthrie, but the promise was held good throughout them all. The profit referred to in this offer of Mr. Dingee's was whatever stock profit might come to the promoters after taking care of the stock bonus that went with the bonds. When that offer was renewed during the early part of the Northwestern affairs, it had to do with the promotion of the Northwestern Portland Cement Company—it was understood from the beginning of our talk to be the establishment of a plant up in Puget Sound. The giving



(Testimony of John L. Howard.)

of these 9,000 shares did not include any recompense to me for the placing of the bonds. Dr. Bachman had a conversation with me once on that subject. During Mr. Dingee's absence in the east, he came to my office on one occasion and began discussing the Northwestern shares, and said that they had arranged to finance this company and that even if I did not place any of the bonds they would give me \$600,000 of stock but if I did place 300,000 of bonds they would [229—81] give me 900,000 of the stock. Nine hundred thousand is what came finally to me. I did not discuss the matter with Dr. Bachman. That was at variance with the voluntary offer of Mr. Dingee which had been made before.

I learned of the Reidle deposit within a month after the Balfour-Guthrie proposal came to an end, very shortly afterwards. I think it may have been a little bit later, but they were close together.

Q. I will ask you if on the occasion of your testimony when given as a witness upon your deposition on the occasion referred to, you testified as follows:

“Q. What was exactly the offer which Mr. Dingee made to you?

A. Equal participation with him and Dr. Bachman in the promotion shares.

Q. Of the Northwestern Portland Cement Company?

A. Of the Northwestern Portland Cement Company.

Q. And when was it that Mr. Dingee made that offer to you?

(Testimony of John L. Howard.)

A. I think about the time of the discovery of the deposits, and a mental decision, at least, on their part, that the company would be organized.

Q. When you speak of the discovery of the deposits, you mean— A. In the middle of 1906.

Q. At Kendall, in Whatcom County, Washington?

A. Yes.

Q. There was no other consideration was there for the 900,000 shares of stock to which you have referred? A. No.”

Did you give that testimony on that occasion?

A. I did. It was true, with this additions, Mr. Dunne, that when I was testifying before you will notice I made no reference whatever to negotiations with Balfour-Guthrie, which immediately preceded the discovery of the claim in Kendall, but there was a voluntary offer on the part of Mr. Dingee, and a distinct understanding during the time that we were negotiating with the Balfours, that I was to share in the promotion profits. I don't recollect making any statement of that character at any time during my deposition. I did not refer I say, to the Balfour [230—82] negotiations at all; and this is the first time that I have made any statement of that kind about the Balfour negotiations.

The MASTER.—I think, gentlemen, if there is no objection urged about that course, it would be better for the sake of the record that the rulings on the reserved questions submitted yesterday should be postponed until the close of Mr. Howard's examination, although I am ready to make a ruling now.

(Testimony of John L. Howard.)

There is no particularly objection to that now, I suppose, is there?

Mr. DUNNE.—No, sir.

Mr. OLNEY.—The objection was made to Mr. Evans' testimony.

The MASTER.—There were a number of objections and motions to strike out taken under advisement yesterday and I stated that I would announce a ruling at 10 o'clock this morning, but I don't like to have the record of the witness split up with extraneous matter, and I think it would be better if the rulings were made at the close of Mr. Howard's examination—simply for the purpose of the record in the case.

Mr. OLNEY.—There is no objection.

WITNESS.—(Continuing.) Mr. Dunne, you touched yesterday on the subject of compensation under these contracts. If I testified that after the first of January, 1908, the compensation was continuously 15 cents per pound, I would like to correct that and make an explanation of why the compensation differs from the price stipulated in the contract. You will find that the contracts with the Standard Portland Cement Company and the Santa Cruz executed in 1906, provided for a commission payment of 10 cents per barrel. During and after the panic in the latter part of 1907, both companies were very remiss in the payments of the accounts which we had against them; for example, for the claims for the bad quality of cement and for credits for empty bags returned to the factory. So that after one of

ration, has been created, and authorized to be created, to the amount of \$2,000,000 in United States gold coin, that the amount of stock represented at said stockholders' meeting was 50,000 shares of the par value of \$100 each aggregating \$5,000,000 of par value; that the vote by which said bonded indebtedness was created, accomplished and authorized was a vote in favor thereof by stockholders representing 50,000 shares of the subscribed and issued capital stock of the corporation, which is more than two-thirds of the subscribed capital stock of the corporation.

IN WITNESS WHEREOF, we have hereunto set our hands and caused the corporate seal of said corporation to be hereunto affixed, this 3rd day of November, 1906.

WILLIAM J. DINGEE,  
President of the Northwestern Portland Cement  
Company and Chairman of Said Meeting of  
Stockholders.

[Corporate Seal] FRANK A. LOSH,  
Secretary of Northwestern Portland Cement Com-  
pany and Secretary of Said Meeting of Stock-  
holders.

WILLIAM J. DINGEE,  
EDWARD MCGARY,  
A. F. MORRISON,  
W. C. WEBB,  
FRANK A. LOSH,  
Directors of Northwestern Portland Cement Com-  
pany. [458—151cc]

## STATE OF CALIFORNIA,

City and County of San Francisco,—ss.

On this 3rd day of November, 1906, before me HENRY P. TRICOU, a Notary Public in and for the City and County of San Francisco, duly commissioned and sworn, personally appeared William J. Dingee, known to me to be the President of Northwestern Portland Cement Company, the corporation described in the within and annexed instrument, and Chairman of the meeting of stockholders of said instrument as such Chairman and President, and Frank A. Losh, known to me to be the Secretary of said Northwestern Portland Cement Company, and the Secretary of said meeting of said stockholders of said Company, whose name is subscribed to said instrument as such Secretary, and they duly acknowledged to me that they executed said instrument as such Chairman and Secretary, respectively of said meeting, of stockholders of said corporation; and as President and Secretary respectively of said corporation; and on the same day personally appeared before me William J. Dingee, Edward McGary, W. C. Webb, A. F. Morrison and Frank A. Losh, known to me to be the Directors of said Northwestern Portland Cement Company, whose names are subscribed to the said instrument as such Directors and they severally acknowledged to me that they executed said instrument as Directors of said Northwestern Portland Cement Company.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at my office in the City and County of San Francisco, State of Cali-



fornia, the day and year in this certificate first above written.

(Notarial Seal)                      HENRY P. TRICOU,  
Notary Public in and for the City and County of San  
Francisco, State of California.

STATE OF CALIFORNIA,

City and County of San Francisco,—ss.

WILLIAM J. DINGEE and FRANK A. LOSH,  
each being duly sworn, each for himself deposes and  
says: That said William J. Dingee is the President  
of Northwestern Portland Cement Company, the  
corporation mentioned in the foregoing Certificate of  
creation of bonded indebtedness; and that Frank A.  
Losh is the Secretary of said Northwestern Portland  
Cement Company; that he has read the foregoing  
certificate of creation of bonded indebtedness and  
knows the contents thereof, and that the same is  
true.

WILLIAM J. DINGEE,  
President of Northwestern Portland Cement Com-  
pany, a Corporation.

FRANK A. LOSH,  
Secretary of Northwestern Portland Cement Com-  
pany, a Corporation.

Subscribed and sworn to before me this 3 day of  
November, 1906.

(Notarial Seal)                      HENRY P. TRICOU,  
Notary Public in and for the City and County of San  
Francisco, State of California. [459—151dd]

In the Matter of the Notice of Stockholders' Meeting of Northwestern Portland Cement Company to Consider Proposition to Create a Bonded Indebtedness.

State of California,

City and County of San Francisco,—ss.

E. C. LUCHESSA, of the said City and County, having been first duly sworn, deposes and says:

That he is, and at all times herein mentioned, was a citizen of the United States over twenty-one years of age; and is competent to be a witness on the hearing of the matters mentioned in the annexed printed copy of Notice of Stockholders' Meeting of Northwestern Portland Cement Company to consider Proposition to Create a bonded indebtedness; that he has no interest whatsoever in the matters mentioned therein; that he is, and at all times embraced in the publication herein mentioned, was the Principal Clerk of the printers and Publishers of the 'Recorder,' a newspaper of general circulation, printed and published daily (Sundays excepted) in said City and County.

That deponent, as such Clerk, during all times mentioned in this affidavit has had, and still has, charge of all the advertisements in said newspaper.

That Notice of Stockholders' meeting of Northwestern Portland Cement Company to consider proposition to Create a Bonded Indebtedness, of which the annexed is a true printed copy, was published in the above-named newspaper on the following dates, to wit: August 31st, 1906, September 7th, 14th, 21st, and 28th 1906; October 5th, 12th, 19th and

26th, 1906, and November 2nd, 1906, and further dependent sayeth not.

E. C. LUCHESSA.

Subscribed and sworn to before me this 2nd day of November, 1906.

CHARLES R. HOLTON,

Notary Public in and for the City and County of San Francisco, State of California.

‘EXHIBIT A.

NOTICE OF STOCKHOLDERS’ MEETING OF  
NORTHWESTERN PORTLAND CEMENT  
COMPANY TO CONSIDER PROPOSITION  
TO CREATE A BONDED INDEBTEDNESS.

Notice to the Stockholders of Northwestern Portland Cement Company is hereby given that in pursuance of a resolution of the Board of Directors of said corporation, passed and adopted at a meeting of said Board, held at the office of the corporation in the City and County of San Francisco, State of California, on the 30th day of August, 1906, a special meeting of the stockholders of said Northwestern Portland Cement Company will be held at the office of the corporation, No. 1228 McAllister Street, in the City and County of San Francisco, State of California (the same [460—151ee] being the principal place of business of said corporation and the building where the BOARD of Directors usually meet) on Saturday the third day of November, 1906, at the hour of eleven (11) o’clock a. m. for the purpose of considering and acting upon a proposition for creating a bonded indebtedness of said corporation to the amount of two

million (2,000,000) dollars, in United States gold coin, to the end and for the purpose of providing moneys to acquire property construct and equip the company's plant and to pay the indebtedness of the company, and for other legitimate and necessary purposes; which bonded indebtedness shall be secured by a mortgage or deed of trust upon all of the property both real and personal, now owned by the corporation, and which it may hereafter acquire.

By order of the Board of Directors.

Dated August 30, 1906.

FRANK A. LOSH,

Secretary of Northwestern Portland Cement Company.

Aug. 31-10 tF.'

(Endorsed): In the Superior Court in and for the City and County of San Francisco, State of California. Department . . . . . In the Matter of the Notice of Stockholders' Meeting of Northwestern Portland Cement Company to Consider Proposition to Create a Bonded Indebtedness. Affidavit of Public in the 'THE RECORDER' of Notice of Stockholders' Meeting of Northwestern Portland Cement Company to Consider Proposition to Create a Bonded Indebtedness. Frank A. Losh, Secretary."

STATE OF CALIFORNIA,

City and County of San Francisco,—ss.

FRANK A. Losh, being first duly sworn, deposes and says: That he is, and was at all the times herein mentioned, the Secretary of Northwestern Portland Cement Company, a corporation created, organized

and existing under the laws of the State of California.

That on the 2nd day of October, 1906, at the City and County of San Francisco, State of California, he addressed a notice of which copy is attached hereto and made a part hereof, to each of the stockholders of said Northwestern Portland Cement Company, whose name appears upon the Company's books between the 30th day of August, 1906, and the 2d day of October, 1906, both days inclusive, at such stockholders place of residence, and that the place of residence of each of said stockholders was at all such times known to affiant; and that affiant mailed said notice, in the case of each stockholder, to such stockholder so addressed by depositing the same on said 2nd day of October, 1906, in the United States Post Office at San Francisco, California with the postage thereon prepaid.

FRANK A. LOSH.

Subscribed and sworn to before me this 2nd day of Oct., 1906.

(Notarial Seal)      ADELINE COPELAND,  
Notary Public, in and for the City and County of San  
Francisco, State of California. [461—151ff]

‘EXHIBIT B.

NOTICE OF STOCKHOLDERS' MEETING OF  
NORTHWESTERN PORTLAND CEMENT  
COMPANY TO CONSIDER PROPOSITION  
TO CREATE A BONDED INDEBTEDNESS.

Notice to the stockholders of Northwestern Portland Cement Company is hereby given that in pursu-



ance of a resolution of the Board of Directors of said corporation, passed and adopted at a meeting of said Board, held at the office of the corporation in the City and County of San Francisco, State of California. on the 30th day of August, 1906, a special meeting of the stockholders of said Northwestern Portland Cement Company will be held at the office of the corporation No. 1228 McAllister Street, in the City and County of San Francisco, State of California (the same being the principal place of business of said corporation and the building where the Board of Directors usually meet) on Saturday the third day of November, 1906, at the hour of eleven (11) o'clock a. m. for the purpose of considering and acting upon a proposition for creating a bonded indebtedness of said corporation to the amount of two million (\$2,000,000) dollars in United States gold coin, to the end and for the purpose of providing moneys to acquire property, construct and equip the company's plant and to pay the indebtedness of the company, and for other legitimate and necessary purposes; which bonded indebtedness shall be secured by a mortgage or deed of trust upon all of the property, both real and personal, now owned by the corporation, and which it may hereafter acquire.

By order of the Board of Directors.

Dated August 30th, 1906.

FRANK A. LOSH,

Secretary of Northwestern Portland Cement Company.

Aug. 31-10t F.' "

(Endorsed on back): "No 750 (Original). Certificate of Creation of Bonded Indebtedness of North-

western Portland Cement Company. Dated November 3, 1906. Filed in the office of the County Clerk of the City and County of San Francisco, State of California, this 5th day of Nov., 1906. H. I. Mulcrevy, County Clerk. By L. J. Welch, Deputy Clerk." [462—151gg]

ARTICLES OF INCORPORATION.

of

STANDARD PORTLAND CEMENT CORPORATION.

No. 904.

C. F. Curry, Secretary of State.

J. Hoesch, Deputy.

STATE OF CALIFORNIA.

DEPARTMENT OF STATE.

I, C. F. Curry, Secretary of State of the State of California, do hereby certify that I have carefully compared the annexed copy of Articles of Incorporation of STANDARD PORTLAND CEMENT CORPORATION with the certified copy of the original now on file in my office and that the same is a correct transcript therefrom, and of the whole thereof. Also that this authentication is in due form, and by the proper officer.

WITNESS my hand and the Great Seal of State at office in Sacramento, California, the 25th day of February, A. D. 1907.

(Seal)

C. F. CURRY,  
Secretary of State.

By .....  
Deputy."

“ARTICLES OF INCORPORATION  
of  
STANDARD PORTLAND CEMENT CORPORATION.

KNOW ALL MEN BY THESE PRESENTS:  
That we, the undersigned, all of whom are citizens of the United States of America, and residents and citizens of the State of California, have this day voluntarily associated ourselves together for the purpose of forming a corporation under the laws of the State of California.

AND WE HEREBY CERTIFY:

FIRST: That the name of said corporation shall be

STANDARD PORTLAND CEMENT CORPORATION.

SECOND: That the purposes for which it is formed are:

(1) To manufacture, buy, sell and deal in all parts of the world in cement and the products thereof, and in all materials and substances contained in the earth, or in whole or in part, manufactured from or compounded of any materials or substances so contained;

(2) To build, construct, hire, lease, buy, own, maintain, construct and operate works, buildings and offices for manufacturing and dealing in cement, and the products thereof, and for manufacturing and dealing in the other materials and substances above mentioned;

(3) To acquire, invest, and deal in, buy, sell,

hold, own, mortgage, hypothecate, lease, let, exchanged and improve, in all lawful ways, all kinds of real and personal property including [463—151hh] easements, water and water rights, and all kinds of rights and franchises, and bonds or other obligations of the United States of America, or of this or any other State or Territory of the United States of America, or of this or any other State or Territory of the United States of America, or of any municipal or political corporation therein or thereof;

(4) To acquire, own, hold and operate quarries, mines, ditches, pipe-lines, flumes, chutes, tramways, reservoirs, water works and electrical plants; and to generate transport, transmit, and sell water, water-power and electrical power;

(5) To charter, build, construct, own, lease, hire and operate steam, sailing and other vessels, and wharves, piers, and warehouses;

(6) To buy, sell, take, lease or otherwise acquire, own, inventions, licenses and patents, and all kinds of interest therein;

(7) To acquire by purchase, subscription or otherwise, and to hold, own, deal in, sell, assign, transfer, mortgage, pledge, and otherwise dispose of shares of the capital stock of, and any bonds or other evidences of indebtedness secured or unsecured, granted or issued by any other corporation or corporations, of this or any other State, Territory, or country, and to exercise all rights and powers of ownership, including the right to vote thereon;

(8) To borrow and lend money, and execute bonds, promissory notes, bills of exchange and other obligations and evidences of indebtedness of all

kinds, whether secured by mortgage, deed of trust, or otherwise, or unsecured;

(9) To mortgage, pledge and convey in trust all or any part of the property, rights, interests and franchises of this corporation and to pledge all or any bonds, promissory notes, bills of exchange and all securities of any kind, and all evidences of indebtedness, secured or unsecured, at any time owned by such corporation.

(10) To aid in any manner any corporation of which any of the bonds or other securities or evidences of indebtedness or stock are held by this corporation, and to do any acts or things designed to protect, preserve, improve or enhance the value of any such bonds or securities or evidences of indebtedness or stock;

(11) To engage in and conduct any other business incidental, necessary, useful or auxiliary to all or any of the purposes or business aforesaid.

(12) Generally to do and perform all things whatsoever that shall be necessary or proper for the full and complete execution of the purposes for which such corporation is formed, and the exercise and enjoyment of all its powers and franchises; and in general to engage in, undertake, transact and do all and singular the things which natural persons may lawfully engage in, undertake, transact and do other than those things which a corporation organized under the laws of this state cannot lawfully do without complying with the special provisions contained in titled II to XVI, both numbers included of Part IV, Division One of the Civil Code of the State of California. [464—151ii]



THIRD: That the place where the principal business of said corporation is to be transacted is and shall be the City and County of San Francisco, State of California.

FOURTH: That the term for which said corporation is to exist is fifty years from and after the date of its incorporation.

FIFTH: That the number of directors of said corporation shall be five, and that the names and residences of those who are appointed for the first year are as follows:

Names.	Whose Residence is at	
James L. Robinson	San Francisco,	California.
Walter Rothchild	“	“
Thomas D. Davidson	“	“
Joseph H. Mayer	“	“
Andrew F. Burke	“	“

SIXTH: That the amount of the capital stock of said corporation is Four million dollars (4,000,000) and the number of shares into which it is divided is Forty thousand (40,000) shares of the par value of One hundred dollars (\$100) each.

SEVENTH: That the amount of said capital stock which has been actually subscribed is Five Hundred Dollars (\$500.00) and the following are the names of the persons by whom the same has been subscribed:

Names of Subscribers.	Number of Shares	Amount
James L. Robinson	One	\$100.00
Walter Rothchild	One	100.00
Thomas D. Davidson	One	100.00
Joseph H. Mayer	One	100.00
Andrew F. Burke.	One	100.00

IN WITNESS WHEREOF, we have hereunto set our hands and seals this Twenty third day of February A. D. 1907.

JAMES L. ROBINSON.     (Seal)

WALTER ROTHCHILD.     (Seal)

THOMAS D. DAVIDSON.     (Seal)

JOSEPH H. MAYER.     (Seal)

ANDREW F. BURKE.     (Seal)

Signed and Sealed in the Presence of:

STATE OF CALIFORNIA,

City and County of San Francisco,—ss.

On this twenty third day of February in the year A. D. 1907, before me Hugh T. Sime, a Notary Public in and for the said City and County, residing therein, and duly commissioned and sworn, personally appeared JAMES L. ROBINSON, WALTER ROTHCHILD, THOMAS D. DAVIDSON, JOSEPH H. MAYER, and ANDREW F. BURKE, known to me to be the persons whose names are subscribed to and who executed the within instrument and acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed [465—151jj] my official seal the day and year last above written.

(Notarial Seal)

HUGH T. SIME,

Notary Public in and for the City and County of San Francisco, State of California.

Filed in the office of the County Clerk of the City and County of San Francisco, State of California, this 23rd day of Feb. A. D. 1907. H. I. Mulcrevy, County Clerk. By L. J. Welch, Deputy Clerk.

City and County of San Francisco,  
State of California,—ss.

I, H. I. MULCREVY, County Clerk of the City and County of San Francisco, State of California, do hereby certify that the annexed is a full, true and correct copy of the original articles of incorporation of STANDARD PORTLAND CEMENT CORPORATION, and of the whole thereof now remaining on file and of record in my office.

WITNESS my hand and official seal this 23rd day of February, A. D. 1907.

(Seal)

H. I. MULCREVY,  
County Clerk.  
H. I. Porter,  
Deputy Clerk."

Endorsed on back: "Certified Copy (By the Secretary of State) of a Certified Copy of Articles of Incorporation of Standard Portland Cement Corporation. Dated February 23rd, 1907. (Endorsed:) Filed in the Office of the County Clerk of the City and County of San Francisco, State of California, this 23rd day of Feb., A. D. 1907. H. I. Mulcrevy, County Clerk. By L. J. Welch, Deputy Clerk. (Endorsed:) Filed in the Office of the Secretary of State the 25th day of Feb. A. D. 1907. C. F. Curry, Secretary of State. By J. Hoesch, Deputy. Record Book . . . . ., Page . . . . ."

 [466—151kk]

Mr. DUNNE.—I will read into the reporter's notes the following historical facts connected with the directorate of the Northwestern Portland Cement Company as shown by the minutes. The original

directorship consisted of W. C. Webb, Edwin Schwab, R. M. Sims, R. M. Moore, A. F. Morrision,—W. C. Webb resigned November 7th, 1906. Edwin Schwab, R. M. Sims, R. M. Moore, resigned October 25th, 1906. A. F. Morrision's position declared vacant November 8, 1906. Edward McGary, vice Schwab, resigned November 23, 1908. Frank A. Losh, vice R. H. Moore, resigned Feb. 8, 1907. Garrett W. McEnerney, vice A. F. Morrision, resigned Dec. 1, 1908. W. H. Cole, vice Edward McGary elected Dec. 1, 1908, resigned May 3, 1909. Samuel A. Boyd, vice Losh, resigned Aug. 21, 1907. Andrew F. Burke, vice Garrett W. McEnerney resigned May 3, 1909. L. F. Young, vice Boyd, resigned May 3, 1909. William J. Dingee, vice R. M. Sims, now serving. Irving A. Bachman, vice W. C. Webb, now serving. W. M. Cannon, vice Young, now serving. At the meeting October 25, 1906, of the Northwestern Portland Cement Company, as appears from page 17 of the minutes of that company, Mr. Edward McGary a stock holder was elected a director, in the place and stead of director Edwin Schwab, and Mr. Frank A. Losh was elected a director at the same meeting. Garrett W. McEnerney was elected a director on Nov. 8th, 1906; William J. Dingee was elected a director at a meeting on October 25, 1906. Irving A. Bachman was elected a director on Nov. 7th, 1906.